



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

DELAWARE RECYCLABLE PRODUCTS, INC., )  
)  
Plaintiff, )  
)  
v. ) C.A. No.  
)  
NEW CASTLE COUNTY, DELAWARE, )  
NEW CASTLE COUNTY COUNCIL, )  
)  
and )  
)  
COUNTY EXECUTIVE MATTHEW S. MEYER, )  
COUNCIL PRESIDENT KAREN HARTLEY-NAGLE, )  
COUNCILMAN KENNETH R. WOODS, )  
COUNCILWOMAN DEE G. DURHAM, )  
COUNCILWOMAN JANET T. KILPATRICK, )  
COUNCILMAN PENROSE HOLLINS, )  
COUNCILWOMAN ELISA C. DILLER, )  
COUNCILMAN DAVID B. CARTER, )  
COUNCILMAN GEORGE SMILEY, )  
COUNCILMAN JOHN J. CARTIER, )  
COUNCILMAN TIMOTHY P. SHELDON, )  
COUNCILMAN JEA P. STREET, )  
COUNCILMAN DAVID L. TACKETT, and )  
COUNCILMAN JAMES W. BELL, )  
in their official capacities, )  
)  
Defendants. )

**VERIFIED COMPLAINT**  
**FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff, Delaware Recyclable Products, Inc., (“Plaintiff” or “DRPI”) by and through its undersigned counsel, upon first-hand information of which it has actual knowledge, upon investigation of its counsel which included a review of publicly

available documents, and upon information and belief as to all other averments, hereby brings this verified complaint for declaratory judgment and the issuance of a permanent injunction and other equitable remedies, and alleges the following in support thereof:

### **PRELIMINARY STATEMENT**

1. Axiomatic to functioning as a society governed by the rule of law lies the fundamental principle that the administration of justice be impartial and free of political interference. Actions have been taken by members of New Castle County Government -- at the expense of the rule of law that prohibits New Castle County Council ("Council") from acting arbitrarily and capriciously in enacting legislation.

2. For approximately 20 years, Plaintiff has successfully owned and operated a permitted construction and demolition landfill and recycling center located at 246 Marsh Lane, New Castle, Delaware (the "DRPI Landfill" or the "Landfill"), under the watchful eye of Delaware's Department of Natural Resources and Environmental Control ("DNREC"). In 2018, Plaintiff filed an application with DNREC, seeking a permit, in accordance with and reliance upon State law and DNREC's regulations, to increase the height of the DRPI Landfill from 130 feet to 190 feet. In 2019, while the application was (and still is) pending, the County usurped DNREC's role by hurriedly passing its own ordinance restricting the height of Plaintiff's DRPI Landfill -- notwithstanding the fact that the County is devoid of any

of the knowledge, experience, expertise, or resources, required to propose, pass, and implement such an ordinance.

3. This litigation involves the targeted campaign of Defendants to obstruct DRPI's pre-existing, lawful, and permitted landfill operations. That campaign resulted in the passage of an invalid and unlawful ordinance by County Council, arbitrarily and capriciously limiting, without any supporting evidence, the height of the DRPI Landfill to a randomly selected maximum height of 140 feet.<sup>1</sup>

4. Defendants' wrongful actions extend beyond acting in an arbitrary and capricious fashion in passing the Ordinance. Certain members of New Castle County Government, including Defendant/Councilman David B. Carter, counsel to Council Michael Migliore, along with Defendant County Executive Matthew S. Meyer ("Meyer"), conspired to manufacture a record at the very last moment before the vote of Council took place, to create the appearance that Council considered documents supporting Council's proposed height restriction. This was accomplished by populating the record with documents for the first time just before the vote on the Ordinance. Such conduct alone evidences that Defendants knew the Ordinance was unsupportable, arbitrary, and capricious. The Council vote on the Ordinance took

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<sup>1</sup> Council voted to adopt Ordinance 19-046, as amended by Floor Amendment No. 1 (the "Ordinance") on August 27, 2019, which was approved by Meyer on August 28, 2019. The adoption of the Ordinance was published in the News Journal, a newspaper of general circulation in New Castle County, on August 31, 2019.

place on August 27, 2019 at a public hearing. At that hearing it became clear that Defendants recognized the fatal flaws in the proposed ordinance, and conspired to rectify those flaws at the last hour.

5. Such conduct cannot now or ever be condoned. The ends do not justify the means when it comes to a legislative enactment, especially where the rushed legislation unlawfully targets one entity alone, and is designed to further the political self-interests of a select few.

6. The passage of the Ordinance, and Defendants' acts associated therewith, are arbitrary and capricious because the 140 foot maximum landfill height is not reasonably related to public health, safety, or welfare, and because Council lacked the information and analysis necessary to make a properly informed decision on the Ordinance. The Ordinance violates DRPI's vested rights as DRPI detrimentally relied upon the existing state of landfill and zoning regulation and the potential to seek future height expansion when acquiring the site and at all times during the pendency and submittal of the Permit Modification Application. Moreover, the Ordinance is invalid as being inconsistent with the County's Comprehensive Development Plan ("CDP").

## THE PARTIES

7. Plaintiff Delaware Recyclable Products, Inc., a Delaware corporation and a wholly owned subsidiary of Waste Management of Delaware, Inc. (“DRPI”), owns and operates the DRPI Landfill.

8. Defendant New Castle County, Delaware (the “County”) is, and refers in the broadest sense, to the government created by delegation from the State of Delaware. Chapter 11, Title 9, Delaware Code.

9. Defendant New Castle County Council (“Council”) is the governing legislative body of the County. 9 *Del. C.* § 1521. Among its powers is the power to regulate land use through planning and zoning for those areas within the County lying outside of incorporated municipalities. 9 *Del. C.* § 2601.

10. Defendant Matthew S. Meyer (“Meyer”) is the New Castle County Executive. Meyer supported the Ordinance and formally approved the Ordinance on August 28, 2019. Meyer is sued in his official capacity.

11. Defendant Council President Karen Hartley-Nagle (“Hartley-Nagle”) is the President of Council. Hartley-Nagle voted to adopt the Ordinance on August 27, 2019. Hartley-Nagle is sued in her official capacity.

12. Defendant Councilman Kenneth R. Woods (“Woods”) represents District 1 on Council. Woods voted to adopt the Ordinance on August 27, 2019. Woods is sued in his official capacity.

13. Defendant Councilwoman Dee G. Durham (“Durham”) represents District 2 on Council. Durham was a co-sponsor of the Ordinance and voted to adopt the Ordinance on August 27, 2019. Durham is sued in her official capacity.

14. Defendant Councilwoman Janet T. Kilpatrick (“Kilpatrick”) represents District 3 on Council. Kilpatrick attended the August 27, 2019 public meeting and elected to abstain from voting on the Ordinance. Kilpatrick is sued in her official capacity.

15. Defendant Councilman Penrose Hollins (“Hollins”) represents District 4 on Council. Hollins was a co-sponsor of the Ordinance and voted to adopt the Ordinance on August 27, 2019. Hollins is sued in his official capacity.

16. Defendant Councilwoman Elisa (Lisa) C. Diller (“Diller”) represents District 5 on Council. Diller voted to adopt the Ordinance on August 27, 2019. Diller is sued in her official capacity.

17. Defendant Councilman David B. Carter (“Carter”) represents District 6 on Council. Carter was a co-sponsor of the Ordinance and voted to adopt the Ordinance on August 27, 2019. Carter is sued in his official capacity.

18. Defendant Councilman George Smiley (“Smiley”) represents District 7 on Council. Smiley was a co-sponsor of the Ordinance and voted to adopt the Ordinance on August 27, 2019. Smiley is sued in his official capacity.

19. Defendant Councilman John J. Cartier (“Cartier”) represents District 8 on Council. Cartier was a co-sponsor of the Ordinance and voted to adopt the Ordinance on August 27, 2019. Cartier is sued in his official capacity.

20. Defendant Councilman Timothy P. Sheldon (“Sheldon”) represents District 9 on Council. Sheldon attended the August 27, 2019 public meeting and elected to abstain from voting on the Ordinance. Sheldon sits on the Board of Directors of the Delaware Solid Waste Authority – the operator of the Cherry Island Landfill in Wilmington, Delaware. Sheldon is sued in his official capacity.

21. Defendant Councilman Jea P. Street (“Street”) represents District 10 on Council. Street was a co-sponsor of the Ordinance and voted to adopt the Ordinance on August 27, 2019. Street is sued in his official capacity.

22. Defendant Councilman David L. Tackett (“Tackett”) represents District 11 on Council. Tackett voted to adopt the Ordinance on August 27, 2019. Tackett is sued in his official capacity.

23. Defendant Councilman James W. (Bill) Bell (“Bell”) represents District 12 on Council. Bell was a co-sponsor of the Ordinance and voted to adopt the Ordinance on August 27, 2019. Bell is sued in his official capacity.

## **JURISDICTION AND VENUE**

24. Plaintiff has both common law and statutory standing to challenge the Ordinance, as amended, pursuant to Chapter 26, Title 9, Delaware Code.

25. Plaintiff faces irreparable harm and has no adequate remedy at law. Only through the exercise of this Court's equitable powers can DRPI be fully protected from harm, with the wrongs addressed effectively.

### **THE LANDFILL**

26. The Landfill, owned and operated by predecessors of DRPI since approximately 1985, and by DRPI since 1999, is located in a Heavy Industry ("HI") zone in an existing community area as defined by the CDP ("Existing Community Area"). The site has been operated as a construction and demolition landfill since approximately 1985, and is currently permitted to accept construction/demolition debris; dry waste including plastic, rubber, lumber, trees, and vegetative matter; and non-hazardous industrial waste solids if approved by DNREC. The Landfill is one of only two active landfills in New Castle County.

27. The Cherry Island Landfill, operated by the Delaware Solid Waste Authority and located in Wilmington, Delaware ("Cherry Island") is the other active landfill located in the County. Cherry Island opened in 1985 and is approximately 513 acres. It is permitted to accept, among other things, residential solid waste, construction and demolition debris, certain asbestos waste, white goods, tires, and household yard waste. Cherry Island is currently permitted to landfill to an elevation of 195 feet and has a mechanically stabilized earth wall that provides a capacity



height of 270 feet. Defendant Sheldon sits on the Board of the operator of Cherry Island.

28. The DRPI Landfill operates in accordance with Industrial Waste Landfill Permit SW-15/02 issued by DNREC (the “Permit”). The Permit, which authorizes a landfill height of 130 feet, was last renewed on December 30, 2015. In July 2018, following applicable Delaware law, regulations, and procedures in seeking permission to increase the height of the Landfill to 190 feet, DRPI submitted to DNREC a Permit Modification Application for Vertical Expansion (the “Permit Modification Application”). In acquiring the landfill and in submitting the Permit Modification Application, DRPI relied upon the existing state of regulations and upon the fact that Cherry Island is permitted to an elevation of 195 feet.

29. DRPI filed the Permit Modification Application because the increased capacity associated with the requested vertical expansion is required to remain in business and serve the needs of its customers, many of which are based in Delaware. In the absence of DNREC granting the requested Permit Modification, DRPI will be forced to cease operations within a matter of months.

30. It is undisputable that the County lacks the expertise held by DNREC in regulating landfills. In fact, by Council’s own admission, the County lacks the necessary resources to implement and enforce the Ordinance.

MR. HOLLINS: To respond to Councilwoman Diller, this ordinance has nothing whatsoever to do with increasing our staff or anyone else's staff. It just simply deals with the height of the landfill. So it doesn't mean that we're going to now take over the responsibility of the people that's operating the landfill. We're basically saying that we're going to limit the height; that's all we're doing. Like any other land use proposal, we're not the one to go out, we're not the police. DNREC still has its responsibility. It simply adds a layer of protection to the residents of New Castle County that they cannot be abused by any aggressive landfill that's going to go beyond the designated height. That's all this does. We don't hire geologists or scientists or anyone else. No one works with New Castle County.

MS. DILLER: Well, how do we do enforcement, then?

MR. HOLLINS: The height is established. We do it the same way we do it now. Who do we hire now to go and enforce height? DNREC does that. We're working in conjunction with DNREC. There's a height limitation, so we're making that standing. It doesn't mean that now--we don't do anything with that landfill today. We don't touch the wells, we don't send geologists out, we don't do any of that. So this ordinance does not create any more staffing or work or responsibility to this county. It's like any other violation. If it goes to court then we defend the code. We will defend what's in this legislation, the same way we defend Pike Creek.

MS. KILPATRICK: Mr. Carter?

MR. CARTER: Yeah, I just want to clarify. First-hand experience in DNREC, the intent of Chapter 60 was to recognize the zoning rights of - - in the state of Delaware. Set the zone because the zoning expertise, with the exception of the coastal zone, that was different, was to - - with the local government. Once the local government says it's an appropriate site, they start zoning. DNREC then in tandem and in partnership, I think, perhaps, a novel concept that the state and county work very closely together and do so in accordance with this statute which lays it out, would continue to do that and look at those type of feasibility issues. What has happened with many of these sites is DNREC does not look at adjacent land use and boundaries. That is the purview of local zoning. So these are not separate, we're not hiring geologists, we are looking at the expertise of local governments who have land use authority - - and the expertise DNREC give where they can have the technical expertise. So if this

is done in accordance with the state code and with our county codes, it will not matter. . . .

*See* August 27, 2019 Land Use Committee Meeting Tr. 98:15-101:5, attached hereto as Exhibit A.

## **THE UNWARRANTED AND UNFOUNDED CAMPAIGN AGAINST DRPI**

31. On April 30, 2019, after the submission of and in a run up to the May 29, 2019 DNREC public hearing on the Permit Modification, Defendants Street and Carter introduced the Ordinance to amend New Castle County Code Chapter 40 (“Unified Development Code” or “UDC”), Article 3 (“Use Regulations”) and Article 33 (“Definitions”) Regarding Landfills. The Ordinance proposed to:

- include solid waste landfills as a Special Use;
- establish a maximum landfill height limit of 140 feet;
- establish ten assessment criteria for requests for vertical expansion;
- amend the Use Table included in Article 3; and,
- add “Solid Waste Landfills (NAICS 562212)” under the Heavy Industry definition in Article 33 of the UDC.

32. Specifically, the Ordinance added a Section 40.03.323 to the UDC to read:

In addition to satisfying all other legal requirements and standards, landfills shall conform with the following standards:

- A. Landfills shall not exceed 140 feet in height, as determined pursuant to industry standards, and all requests to increase the landfill height up to and including this maximum shall be subject, first, to an assessment of:
1. The benefits of and need for any proposed height increase;
  2. The impact of such height increase and associated landfill operations on the health of nearby residents;
  3. The impact of such height increase and associated landfill operations on the values of real property in proximity thereto;
  4. The impact on traffic in the surrounding area;
  5. The impact on noise and visual blight to the surrounding area;
  6. The impact on stormwater, wastewater discharge, and flooding in proximity thereto;
  7. All other impacts on the health, safety, and general welfare of nearby residents;
  8. The compatibility with the policies and objectives of the Comprehensive Development Plan of New Castle County;
  9. The impact of the proposed height increase on immediate residents and neighborhood and the compatibility therewith, and a comparison of the impact on and compatibility with surrounding residents and neighborhoods; and

10. Whether the benefits of a height increase outweigh the negative impacts.

*See* Ordinance 19-046 as introduced, a true and correct copy of which is attached hereto as Exhibit B.

33. It was no secret that the Ordinance exclusively targeted the Landfill. Indeed, Migliore, counsel to Council, presented PowerPoint presentations specifically referencing the Landfill and how it would be impacted by the Ordinance. He admitted that the 140 foot maximum landfill height was focused on DRPI. Migliore explained that the randomly selected 140 foot height was established to give DRPI time to transition its operations to another state and not because of any scientific evidence or rational relationship to the public health, safety or welfare:

The first consideration--well, none of the considerations, rather, was the maximum height would have allowed for existing - - subject to council jurisdiction to go up to 140 feet. In the case of DRPI, this would allow them to increase the - - height by an additional ten feet and they approved 130 to 140. The intent behind this was to strike the reasonable balance between council's concerns related to health - - and safety of the surrounding neighborhoods. By allowing DRPI time to reasonably continue with its business and continuing individuals, as well, allowing for sufficient time to transition operations as - - transition - - to other locations. - - use the site for other admissible purposes. That was the comments made to the sponsors of the legislation and I think they took that to heart as far as consideration of jobs. And because of that that's the reason why the sponsors decided to go for what's a reasonable meeting of the minds, if you will, to allow for an increase in the height, but that striking the balance with the concerns about health. Based on - - DRPI submission to DNREC noting that they were in excess of two - - they're similar now to what the DRPI implied in their application; their

2015 application provided for an increase of 40 feet, approximately over a ten-year time span.

*See* August 27, 2019 Council Meeting Tr. 77:9-78:15, attached hereto as Exhibit C.

34. As the Ordinance was designed to quash DRPI's request for a height increase (and in effect shutter DRPI's operations), the Ordinance only addresses the height standard. It does not address any other standard typically contained in a use regulation, including buffer standards, other locational or dimensional standards, any minimum or maximum spacing, site area, road access, open space, or lot area standards, or any additional special use standards. One need only review the Special Use form ("Table") to appreciate the narrow scope of the Ordinance which focuses (improperly) on only one of the special use standards, the standard that targets DRPI. *See Table 40.03.210, Limited and Special Use Standards*, a true and correct copy of which is attached hereto as Exhibit D. In Defendants' haste to pass the Ordinance, they amended the Table deeming all "Heavy industry" uses as a "special use", without putting non-landfill "Heavy industry" users on notice of this amendment (the title of the Ordinance indicated that it only related to landfills).

35. Council contends, among other things, that the Ordinance was proposed to proactively address future landfills, as well as to regulate the existing landfill located in New Castle County's jurisdiction. However, the nature and scope of the

Ordinance and the conduct of Defendants, unequivocally evidence an intent to target DRPI and its Landfill.

36. DNREC held a public hearing on the Permit Modification Application on May 29, 2019 (the “DNREC Public Hearing”). The public comment period closed on June 28, 2019. DNREC has not yet issued a decision on the Permit Modification Application.

### **TARGETING DRPI**

37. Meyer communicated to County residents unsubstantiated claims about alleged water impacts associated with the Landfill, which unsubstantiated claims overstepped DNREC’s expertise, lacked any factual support to establish a height limit where one did not exist, and capitalized on meritless issues raised by Artesian Resources Corporation (“Artesian”).

38. Meyer admitted during a Delaware Energy Conference on October 24, 2019 that the genesis of the Ordinance was rushed and related to Plaintiff’s Permit Modification Application: “[B]efore the permit was issued we managed to get an ordinance passed that limited that height” adding that Meyer wanted to disallow “dumping environmental liabilities in the poorest neighborhoods across our community.” Meyer had announced a Green Legislation Agenda with seven initiatives and he was “very proud that it took a few weeks for us to get the first two of the seven through” – limiting the height of the Landfill.

39. On July 17, 2019, Artesian sent a letter to its customers requesting that the customers join Artesian and Meyer at a political rally being held at the Landfill to: “tell Waste Management that they will not poison our water for their own profit.” A true and correct copy of this letter is attached hereto as Exhibit E.

40. On July 22, 2019, Meyer caused The News Journal to publish an editorial written by Meyer, also containing unsubstantiated claims. The editorial properly pointed out that DRPI applied to DNREC to increase the height of the Landfill from 130 feet to 190 feet. Meyer stated that he “joined with a broad coalition of community leaders, neighborhood advocates, scientists, businesspersons, other elected officials and one of [Delaware’s] leading water providers to act against” DRPI’s application for a height expansion.

41. However, the editorial then continued:

[I]ncreasing the landfill capacity is a threat to our water supply. The landfill sits atop the Upper Potomac Aquifer, one of Artesian Water’s largest aquifers in Delaware, serving hundreds of thousands of residents of New Castle County. Artesian’s leading water scientists have testified that increasing the height of the landfill will increase contaminants, potentially polluting drinking water for thousands of Delawareans. New Castle County Council published notice on July 27, 2019 of a combined public hearing and regular Council meeting on August 27, 2019 to consider and vote upon the Ordinance.

A true and correct copy of the editorial is attached hereto as Exhibit F.

42. The purpose of the editorial was clear – to instill fear into the minds of County residents, to create the appearance that Defendants were watching out for the



public's welfare, and to create a problem in need of a solution that Defendants could provide, an ordinance that would extinguish Landfill operation.

43. Defendant's comments in the editorial are unproven. Furthermore, evidence was presented and entered into the record refuting the claims. For example, see the July 22, 2019 letter from Taylor GeoServices which confirms, among other things, that there has been no indication of facility related impact – a finding which has been confirmed by DNREC (p. 7) and that DRPI Landfill is hydraulically isolated from Artesian's well fields (p. 8). A true and correct copy of the Taylor GeoServices July 22, 2019 letter is attached hereto as Exhibit G. Likewise, see Geosyntec Consultants' July 23, 2019 letter which not only shows that the DRPI Landfill does not sit atop the Upper Potomac aquifer as Meyer claims (p. 3), but provides factual refutation of each of Artesian's claims. A true and correct copy of the Geosyntec Consultants July 23, 2019 letter is attached hereto as Exhibit H.

44. In fact, the President of Council admitted that the County did not have evidence that the Landfill caused any contamination to the water supply and that at the least more investigation was necessary:

And what I found out is that in all likelihood there's a number of issues that have to do with why or why not the drinking water may or may not be contaminated. But it is less likely, it looks like, to be Waste Management, the other areas. And what is most upsetting is my emails are coming from all over the county. The entire county communicates that their drinking water is contaminated. And that probably is - -. And so to have put that out I don't think was very responsible to dream it up so much that people are frightened

to drink the water. You needed to do more investigation and you needed to have a lot more information about what was happening and we're not talking about the other issues that may have--be with the landfill because I know there's a number of other people that have talked to that, but the water is important today. And what are we going to do about it? Because it looked like the other - - sites. . . . We need the State of Delaware to evaluate the threat of this landfill.

Further, the consideration of this permit has increased our awareness and concern for the existing and future pollution threats to our water supply. We can't limit our attention to just the Waste Management landfill, which is many miles from the Artesian well field, so I'm going to speak about are very close. There are a number of contamination sources of the Artesian well field much closer than the land management landfill. They include the - - landfill super - - site. The - - landfill, super - - site. The Delaware Sand Landfill super fund site. And the reported water contamination from the New Castle Airport. While we clearly need to assess existing and future threats of the Waste Management landfill, it would be indefensible not to evaluate the threat of sources much closer to the Artesian well field.

*See August 27, 2019 Council Meeting Tr. 65:16-67:21, attached hereto as Exhibit C.*

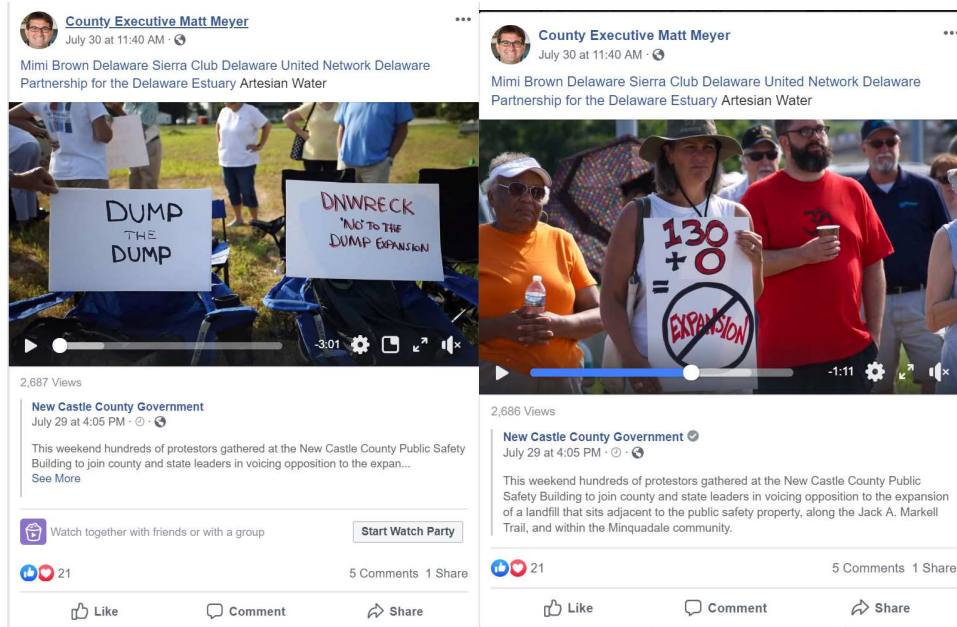
45. On July 24, 2019, Meyer posted on his official Facebook page an encouragement to his followers to join him in taking a stand against DRPI's Landfill height increase. New Castle County Government shared his post.





46. The July 24, 2019 Facebook posts included unsupported assertions regarding claims of potential impacts to water and referenced the July 22, 2019 editorial in the News Journal rife with misleading statements. The Facebook post claimed, without basis, that increasing the maximum height of the Landfill from 130 feet to 190 feet would “threaten . . . drinking water.” There was and is no evidence of a threat to a water supply resulting from the Landfill, or from increasing the height of the Landfill as set forth in the Permit Modification Application.

47. On July 27, 2019, Meyer spoke at a rally in front of the DRPI Landfill. Both Meyer and New Castle County Government addressed the rally in posts on their respective Facebook pages.



48. The New Castle County Planning Board (the “Planning Board”) and Department of Land Use (“Land Use”), a department under Meyer’s power and control, held the joint public hearing required by UDC 40.31.120 on August 6, 2019. A draft recommendation to support the Ordinance was issued by Land Use on August 16, 2019.

49. Land Use’s final recommendation in support of the Ordinance (“Departmental Report”) was issued on August 20, 2019 at the Planning Board Business Meeting, where the Planning Board voted to recommend approval of the Ordinance.

50. On August 26, 2019 – the day before Council voted on the Ordinance – Meyer shared a link on his Facebook page to his editorial published in The News Journal. It reads in part as follows: “We will establish limits on landfills. Community

members are rightfully concerned by recent efforts to expand a landfill consisting of primarily out-of-state trash, located over an aquifer providing public drinking water to Delaware families. This legislation would enact County protections to prevent hazardous impacts on our communities.” The articulated premise underlying the proposed Ordinance of preventing “hazardous impacts” was unsubstantiated, and the 140 foot height limitation was arbitrary and capricious. There was no technical, scientific, or legal basis to set a 140 foot limit as opposed to a limit of 135 feet, 147 feet, 162 feet, or any other height. The only basis behind the number 140 was its relation to Plaintiff’s permitted height limit of 130 feet.

51. In the afternoon of August 27, 2019, hours before the full Council voted on the Ordinance, Council’s Land Use Committee met to consider the Ordinance.

52. Later that day, Council held the combined public hearing and regular Council meeting to consider and vote upon the Ordinance. New Castle County Council Rule 5.4 (Timing of Legislation or Matter to be Considered at a Committee Meeting; Specific Committees) states that amendments to the UDC must be scheduled for consideration by the Land Use Committee at least seven days prior to being considered at a Council Meeting. The only exception to this rule is for emergent or exigent circumstances exist. As there was clearly not an emergent or exigent circumstance and because that combined public hearing and regular Council meeting was less than seven days after the Council’s Land Use Committee meeting

on the Ordinance, Council was forced to vote to suspend its own rules (without putting that vote on the agenda and thus denying the public the requisite notice of this issue) in order to rush this vote through:

MR. SMILEY: I thought you were ready to call announcements. That's why I wanted to go in order before now. Okay. To make a motion--in light of councils--having a short break in the agenda we have in this evening, I make a motion to suspend with 5.4 so that we can actively discuss and vote on all legislation listed on this evening council agenda.

MALE VOICE: Second.

PRESIDENT HARTLEY-NAGLE: All in favor?

SEVERAL VOICES: Aye.

PRESIDENT HARTLEY-NAGLE: Any opposed? The motion is passed.

*See August 27, 2019 Council Meeting Tr. 4:25-5:13, attached hereto as Exhibit C.*

53. Defendants have made clear that DRPI is the only landfill subject to the Ordinance. Michael Migliore, counsel to Council, at a meeting of Council on August 27, 2019, stated that:

Going to the [point] pertaining to why Cherry Island and - - are not regulated by the ordinance. That's simple. Two reasons. Number one, Cherry Island is not located in New Castle County. It's located in the corporate - - in the City of Wilmington and therefore not subject to New Castle County - -. And number two, Title 7 makes it clear that the - - entity equation of the state is subject to regulation by the state, specifically Title 7 makes it more - -, but it's not subject to land use regulations.

*See* August 27, 2019 Council Meeting Tr. 74:10-21, attached hereto as Exhibit C. Migliore fails to note that DNREC’s permit issued to Cherry Island (which is located in New Castle County) mandates that the operations at Cherry Island be conducted “in compliance with all federal, state, county and municipal environmental statutes, ordinances, and regulations.”

54. Aside from the information provided to Council by Migliore about the effect of the Ordinance on Cherry Island, Carter also said at the August 27, 2019 meeting of the Land Use Committee of Council that DRPI’s Landfill will be the only landfill affected by the Ordinance:

However, the ordinance regulates only those landfills that are - - jurisdiction, and one and two has not been preempted by law. To this point, there is only one existing and active landfill located in New Castle County, and that is [DRPI’s Landfill]. . . . The ordinance would simply hold DRPI to the agreed-upon terms of the permit between DRPI and DNREC and the reasonable expectations based upon that language.

*See* Land Use Committee Meeting Tr. 47:6-14, attached hereto as Exhibit A.

### **MANUFACTURING THE “RECORD”**

55. After public comment on the Ordinance had ended and in clear recognition of the fatal flaws in the Ordinance – specifically that the record was devoid of any evidence to support the Ordinance – Defendant Carter for the first time

populated the record with documents that were never previously referenced, identified or provided to the other councilmembers or the public.

Yes. Thank you, Madam President. What I do want to do is to insure that I have a moment here to **put about 15 documents onto the record.**

Starting with a testimony that we had at the New Castle Claim Board that chronicles 30 years of work and coordination in trying to work with different people in this area, recognizing and their technical understanding of why this is problematic. I think that's very important. And there are some supplemental documents that go with that. Our report of the governor's taskforce in 1994, Recognition Number 5, List of Code 2, to do away with all landfills in this area of the river. I'd also like to mention the South Wilmington Special Management Plan that dealt very much so with a lot of industrial land nearby. These begin to show the evolution of our planning in this region and for which our zoning is not involved with., leading to this code change.

Then, finally, the community - - document - - but so well captures many of the concerns of health and safety and welfare. Also, the real impacts of transportation where they have not spoken to a lot. These communities are sandwiched between several interstates. You've got the additional truck traffic and diesel emissions coming out that can add harm to that. Making this even worse, because it has the highest rates of that in the area. All of this contributes to it. I also wanted to insure that I included the conservation corridor. That gives us an idea of where we have the - - canal, how it's impacted, how the sites are there. I did include the executive orders as background that's been done leading to the division of this. So, what we have is that history, 30 years of trying to deal with the issues in this area. I would include the PowerPoint that I have that I put together that for clarification is on the ordinances, looking at some of the landfills. For instance, you talk about the websites that I think you have on the supervised sites. There were some gravel and others. I looked at those. I actually went and reviewed those environmental impact statements for those landfills when they became super clean sites. And it talks a little bit about the deactivated. Also, allowing the elevation data. When I looked at a lot of those locations, physically in size, that could be potential targets, like some areas of larger farms around these correctional center in our district and I have no doubt that one of the areas that has been looked at and passed would be whether or not that's an appropriate



place for a future landfill. I also included for reference the regulations governing solid waste. These do not go along. It's important to look at them.

There's a lot of the types of acts and other things. Once we get through our zoning, I think we should be referring and have on record a copy of those regulations. Many of the questions that we talked about and reviewed during the final moments, I think we have a first look at what was DNREC supposed to do and then we can decide whether or not we have confidence or them to follow up with the rest. As it's in the law, in the regulations, there's nothing to do as a safeguard for our citizens. A lot of talk about recycling and other things and we need to coordinate. We do have a statutory required stellar state, a statewide solid waste management plan that addresses that. I do believe that that has been updated. It was last updated the last time this controversy was run by permit I believe. But, it gives us a lot of guidance for the statutory tried, not just negotiating, talking back and forth. I include a copy of Southern Delaware Code Chapter 60, Environmental Control, 6003, that clarifies our role as a zoning agency and how that is the perfect guides to as a prerequisite step for the permanence of that. So we have that on record and are very clear about it.

I will include at least a number of us from council our supplemental record to an incoming hearing to the DNREC permit application that highlights some of the problems and some of the other issues and things and there are some exceedances and other problems that occurred at this site. I have included a copy of Agency Section 48-2242, heavy industry districts and how they're defined and seen basically. Basically, the loading resource that issued the heavy use and was located away from residential areas. So, I think the meaning of this ordinance could lean closer to what our law says we should do. Northern Delaware Code Chapter 26 talks about zoning for the purposes and the powers and I made a clear copy of that. We are exercising those powers clearly and under state law. And then NDC 40-0105, the intent and intent of us to do this zoning is protect our citizens from potential adverse impacts of the land uses and that's in our - -.

So, I just wanted to make sure that **all of these are into the record**. I have this all from the clerk, both in hard copy and I do have a PDF document that will be entered, **so that it is part of the record**. Thank you.

*See* August 27, 2019 Council Meeting Tr. 209:23-214:18, attached hereto as Exhibit C (emphasis added).

56. The documents dumped into the “record” were not provided to members of Council or the public. The documents were certainly not considered as part of Council rendering a vote on the Ordinance, despite Carter’s repeated references to the record and reference to the Council clerk, who was also as uninformed as everyone else in Council chambers at that moment. Carter’s claim about “the record” was manufactured. It was part of a last minute scheme contrived to provide a legally and technically defensible basis for the Ordinance, which basis did not and does not exist.

57. The fabrication of the record denied Plaintiff of due process. Neither Plaintiff, the public nor the other Council members were provided with an opportunity to review the documents prior to the vote. At the Council meeting, Defendant Tackett pointed out that Carter – the co-sponsor of the Ordinance – presented a “magnitude of information” in advance of the vote that the councilmembers “**weren’t actually able to read.**” *See* August 27, 2019 Council Meeting Tr. 225:25-226:9, attached hereto as Exhibit C (emphasis added).

58. There was no public comment after introduction of the documents.

59. Rather, in what Defendant Smiley called a “new road” for Council, the vote was taken only moments after the documents were placed into the record. at the last minute:

MR. SMILEY: I’m gonna make a clarification and I guess the question for Council, the Council, as we’re traveling down a new road here tonight. Normally your board commissions and everything else, state legislature, when you leave a record open for submissions, it’s so that that information can be taken into account before decisions are made. We’re making our decision tonight. When we vote, our record is closed. So, I don’t want to falsely lead someone to believe and this Council start down this road where we’re conducting votes and we’ve got documents coming in for periods on end. The purpose of keeping a record open is to obtain additional information that those that -- . . . .

MIGLIORE: Councilman, I agree with you in the late hour. I would say that I misspoke, so anything you have that was, should be submitted tonight.

MR. SMILEY: Prior to the vote.

MIGLIORE: Yes. **Anything that’s been used as part of consideration.**

*See* August 27, 2019 Council Meeting Tr. 222:20-224:1, attached hereto as Exhibit C (emphasis added).

60. Defendants knew that the documents that were dumped into the record at the last moment were not considered by Council.

61. The Carter document dump underscores the blatant disregard of the Defendants for the rule of law. Council thought one of its members could dump many documents into a “record” at the last moment – documents that were not provided or relied upon, let alone not “used as part of consideration.”

62. The documents dumped into the record by Defendant Carter were not used in considering the Ordinance. The other Council members knew as much, but sat idly by while the record was being manufactured in a veiled effort to provide the missing evidence that Council's actions were supposedly not arbitrary and capricious.

63. Council voted without reviewing the recently fabricated record. Defendants Hartley-Nagle, Woods, Durham, Hollins, Diller, Carter, Smiley, Cartier, Street, Tackett and Bell voted in favor of the Ordinance while Defendants Kilpatrick and Sheldon abstained. A true and correct signed copy of the Ordinance is attached hereto as Exhibit I.

64. When announcing their votes, the members of Council gave almost no reasoning for their votes, with most members simply stating "Yes". *See* August 27, 2019 Council Meeting Tr. 225:1-226:18, attached hereto as Exhibit C. Indeed, at no time before, during and after the meeting at which the Ordinance was passed did Council explain the reasoning behind the 140 foot height limitation. Self-serving, conclusory statements that the public health and safety were involved are woefully insufficient. The purpose of the Ordinance was to limit DRPI's height limit to 140 feet (and no other restrictions that would go toward health and safety concerns if those concerns were what really was involved).

65. Even after the Council's vote on the Ordinance, the Defendants continued their campaign targeted at DRPI and its Landfill. Just after the passage of the Ordinance, Meyer told WDEL:

Tonight is a victory in that county government has stood up and said that that kind of conduct is no longer acceptable. We need to have a community conversation on where should landfills go. We can't continue to expect a community like Miquadale to bear the brunt of the trash that we as a community are generating.

66. On August 28, 2019, the day after Council approved the Ordinance, Meyer held a press conference adjacent to the Landfill to sign the Ordinance. The New Castle County Government shared a photo of the event on its Facebook page, as did the County's Department of Land Use.



## **COUNT I**

### **ARBITRARY, CAPRICIOUS AND IRRATIONAL**

67. DRPI repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth at length herein.

68. A text amendment is invalid if it shown to be arbitrary and capricious.

69. A text amendment is arbitrary and capricious if it is violative of the requirement of reasonable relationship to the public health, safety, or welfare.

70. The record is devoid of any evidence, let alone substantial evidence, to support Land Use's recommendation for the Ordinance, the Council vote in favor of the Ordinance and Meyer's signing of the Ordinance. Rather, and as set forth below, in critical regards the record reflects an arbitrary, capricious and irrational Land Use recommendation, Council's vote and Meyer's signing.

71. The record is devoid of any evidence, let alone substantial evidence, to support any reasonable relationship between the Ordinance's requirements and the public health, safety, or welfare, and as such, the Ordinance is arbitrary, capricious and irrational.

72. The record is devoid of any evidence, let alone substantial evidence, to support the 140 foot maximum landfill height imposed by the Ordinance, and as such, the Ordinance is arbitrary, capricious and irrational. There is no substantial evidence to support why 140 feet was selected as opposed to another height and no substantial

evidence to show that such a limitation has any reasonable relationship to the public health, safety, or welfare. In fact, as shown above and according to counsel for the County, the height was established in order to give DRPI time to transition its operations to another location, and was based upon DRPI's existing permitted height.

73. Likewise, the record is devoid of any evidence, let alone substantial evidence, to support the Ordinance's omission of buffer standards, other locational or dimensional standards, including minimum and maximum spacing, site area, road access, open space, and lot area, and additional special use standards.

74. The record is devoid of any evidence, let alone substantial evidence, to support the Ordinance's application to construction and demolition landfills, but not to other types of landfills, and as such, the Ordinance is arbitrary, capricious and irrational.

75. The record is devoid of substantial evidence that there was full exploration of facts by Land Use prior to issuing its recommendation or by Council prior to adopting the Ordinance. As such the Ordinance is arbitrary, capricious and irrational.

76. In fact, when voting in favor of the Ordinance, Defendant Tackett stated that Defendant Carter – the co-sponsor of the Ordinance – presented a “magnitude of information” the night of the vote that Carter wanted on the record but that the

councilmembers “weren’t actually able to read” the information. *See* August 27, 2019 Council Meeting Tr. 225:25-226:9, attached hereto as Exhibit C.

77. The inclusion of the documents by Defendant Carter, at the behest of the County, never provided to or read by Council members, constituted a fabricated record rendering the entire process behind the Ordinance invalid.

78. The 2012 New Castle County CDP has a strong preference for infill development. The Landfill is in an HI zone in an Existing Community Area, and is an appropriate use in that zone and area. The Ordinance’s prohibition of infill development, and particularly as applied to the Landfill, is therefore contrary to the CDP. The prohibition of infill development will likely lead to the development of currently vacant land or greenspace elsewhere in the state for HI use, again contrary to the stated goals of the CDP.

79. There is no evidence of record that the Council, when it voted in favor, gave particular attention to the evident incongruity between what was being proposed and the present CDP. The record is devoid of substantial evidence in support of such a prohibition on infill development, or how such a prohibition reasonably relates to the public safety, health and welfare.

80. Other requisite factors neglected or subverted. The other factors to be considered before a text amendment is recommended and then approved is “consistency with the provisions of this Chapter and standards for similar uses;”



“necessity to respond to State and/or federal legislation;” “flexibility in meeting the objectives of this Chapter;” “changes to conditions, interpretations, and/or clarifications to existing language for new uses;” and “consideration of specific problems found in this Chapter.” UDC § 40.31.420.

81. In the Departmental Report, short shrift was given to other factors which are statutorily mandated for consideration before a text amendment is recommended or approved. The factors were not given reasoned analysis. No one at the Council meetings stated that the text amendment criteria had been affirmatively met. The record, therefore, is devoid of any substantial consideration of the appropriate factors.

82. As stated above, the councilmembers gave almost no rationale when announcing their vote in favor. As part of the text amendment process, which is quasi-judicial, the Council must provide a comprehensible statement for the reasons underlying the result. While every councilmember need not supply page-and-verse when voting, there is a responsibility to provide the reasoning supporting the decision in a manner rationally tied to the record before it.

83. The rush itself was capricious and unreasonable. To reiterate, Council voted on a text amendment on the night that it was presented with a “magnitude of information” that it was not able to read and the Council provided no scientific basis or other evidence supporting the 140 foot maximum landfill height, or demonstrating

its reasonable relationship to the public health, safety, or welfare. There was no logical and valid reason why the vote on the Ordinance could not have been deferred for Council to review the information.

84. Further, despite the President of Council stating that they needed the State of Delaware to evaluate the threat of the Landfill, Council proceeded to vote without requesting or awaiting the results of such an evaluation.

85. The Ordinance is invalid because it is arbitrary, capricious, and irrational, because it is not reasonably related to public health, safety, or welfare and because Council and its members lacked adequate information to make an informed decision on the Ordinance and because there was an inadequate record.

## **COUNT II**

### **INCONSISTENCY WITH THE COMPREHENSIVE DEVELOPMENT PLAN**

86. DRPI repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth at length herein.

87. By State law, once a comprehensive development plan has been adopted by the County, all text amendments to zoning ordinances either must be consistent with the comprehensive plan, or the comprehensive plan itself must be expressly amended to achieve consistency. 9 *Del. C.* §§ 1305 and 2607.

88. On that topic - the primacy of the Comprehensive Development Plan - the County Code is in accord with State law. UDC § 40.31.410. It provides that

“implementation and achievement of the Comprehensive Development Plan’s goals and objectives” must be considered when determining whether a text amendment should be recommended (by the Department) or approved (by the Council).

89. The significance and legal scrutiny given to zoning ordinances arise from an intent to set the legal rules by which residents, institutions and businesses choose their locations and make important, long-term investment decisions.

90. A zoning text amendment is invalid if it is inconsistent with the comprehensive development plan.

91. The record of the text amendment must set forth a sufficient basis for any conclusion that it was consistent with the comprehensive development plan.

92. The Ordinance is inconsistent with several sections of the 2012 New Castle County Comprehensive Development Plan (the “CDP”), including the CDP’s strong preference for infill development.

93. The Ordinance prohibits infill development by capping the maximum landfill height at 140 feet, which may require the future development of greenspace elsewhere in the state for landfill use.

94. Vertical expansion is the ultimate infill type development, which this Ordinance prohibits.

95. CDP Ch. 3, 3.0 states:

Growth through infill and redevelopment is another key element to ensure that growth is properly managed and directed into areas identified as priority spending areas in the State Strategies. New Castle County continues to improve the redevelopment incentives as provided for in the County Code which have been utilized in several large scale redevelopment projects.

96. In Section 9.4 Goals, Objectives and Strategies of the CDP, Strategy #1 is to “[p]romote infill and redevelopment to optimize existing infrastructure, creating transit corridors with a mix of housing and relieve the pressure of greenfield development.”

97. The Ordinance has the impact of increasing emissions of vehicles by likely sending vehicles further away and elsewhere to dispose of construction waste, potentially in greenfields which will likely increase land consumption. CDP Ch. 3, Land Use, 3.1, Air Quality Impact states that emissions from vehicles have a negative impact on air quality.

98. The Ordinance undermines many potential benefits that would have been achieved by a Community Services Agreement including for example, by strengthening underserved communities, and enhancing open space and community support systems.

99. CDP Ch. 3, 3.4 Goals, Objectives and Strategies, #13 states:

To reverse decline in those communities that are experiencing some level of distress, efforts to promote and support community stabilization and redevelopment should be undertaken in partnership with both public and non-profit agencies including the creation of community development corporations and community non-profits, home-ownership assistance

programs, redevelopment of under-utilized or poorly maintained non-residential and apartment properties and improved connections for automobiles and pedestrians.

100. The Ordinance has the practical impact of removing a critical piece of infrastructure serving Delaware businesses within an approved HI zone in an Existing Community Area without a plan as how to replace it or address increased cost of disposal to more remote locations. This impact is inconsistent with the CDP's strong preference for infill development.

101. The Ordinance will discourage economic development and investment in New Castle County and displace workers and staff assigned to the facility, which is inconsistent with the CDP's goals of post-recession economic growth.

102. Finally, the record of the text amendment does not set forth a sufficient basis for any conclusion that it was consistent with the comprehensive development plan.

### **COUNT III**

#### **DEPRIVATION OF VESTED RIGHTS**

103. DRPI repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth at length herein.

104. The Ordinance violates DRPI's vested rights as DRPI detrimentally relied upon the existing state of landfill and zoning regulation and the potential to

seek future height expansion when acquiring the site and at all times during the pendency and submittal of the Permit Modification Application.

105. When a local government adopts an ordinance which affects private property and the property owner asserts a vested rights claim in response, the court must consider, among other factors, “the nature, extent and degree of the public interest to be served by the ordinance amendment,” and “the nature, extent and degree of the developer's reliance on the state of the ordinance under which he has proceeded—i.e., the developer's good faith reliance on existing standards”.

106. The Ordinance, which was targeted at DRPI, deprives DRPI of its vested rights.

107. The Landfill is the only landfill to which the Ordinance applies.

108. When DRPI acquired the Landfill site, the zoning regulations did not impose a height restriction upon landfills.

109. DRPI relied upon this in acquiring the Landfill.

110. DRPI's reliance is evidenced by DRPI's Permit Modification Application, which seeks to increase the maximum permitted landfill height from 130 feet to 190 feet. DRPI further relied upon the fact that Cherry Island Landfill was permitted with a maximum height of 195 feet.

111. Further, DRPI expended substantial resources on acquisition of the Landfill and the Permit Modification Application.

112. The record fails to set forth substantial evidence demonstrating that the Ordinance has a reasonable relationship to the public safety, health or welfare or that it serves the public interest.

113. However, DRPI 's reliance on the state of the ordinance under which it has proceeded—i.e., DRPI's good faith reliance on existing standards—is clear.

114. The Ordinance, which is targeted at DRPI, will materially and immediately impact DRPI's operation of the Landfill and will likely lead to loss of jobs and the development of greenspace for HI use.

WHEREFORE, Plaintiff prays for the following relief:

A. A declaration that the vote of Council was substantively illegal, being arbitrary and capricious in several critical regards;

B. A declaration that the vote of Council to adopt and approve the text amendment was arbitrary and capricious;

C. A declaration that the Departmental Report provided inadequate analysis and lacked substantial evidence to support a conclusion that the standards for the text amendment were met;

D. An injunction against the enforcement of the Ordinance;

E. An injunction against the Defendants' interference with the granting of any permit permitting vertical expansion of a landfill;

F. Such further relief as is equitable in the circumstances; and

G. Plaintiff's attorneys' fee and expenses.

**FOX ROTHSCHILD LLP**

/s/ Sharon Oras Morgan

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Sidney S. Liebesman, Esq. (No. 3702)

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Date: October 30, 2019

*Attorneys for Plaintiff*





**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

DELAWARE RECYCLABLE PRODUCTS, INC., )  
)  
Plaintiff, )  
)  
v. ) C.A. No.  
)  
NEW CASTLE COUNTY, DELAWARE, )  
NEW CASTLE COUNTY COUNCIL, )  
)  
and )  
)  
COUNTY EXECUTIVE MATTHEW S. MEYER, )  
COUNCIL PRESIDENT KAREN HARTLEY-NAGLE, )  
COUNCILMAN KENNETH R. WOODS, )  
COUNCILWOMAN DEE G. DURHAM, )  
COUNCILWOMAN JANET T. KILPATRICK, )  
COUNCILMAN PENROSE HOLLINS, )  
COUNCILWOMAN ELISA C. DILLER, )  
COUNCILMAN DAVID B. CARTER, )  
COUNCILMAN GEORGE SMILEY, )  
COUNCILMAN JOHN J. CARTIER, )  
COUNCILMAN TIMOTHY P. SHELDON, )  
COUNCILMAN JEA P. STREET, )  
COUNCILMAN DAVID L. TACKETT, and )  
COUNCILMAN JAMES W. BELL, )  
in their official capacities, )  
)  
Defendants. )

**VERIFICATION**

I, Michael Brennan, of full age, hereby verify as follows:

This Verification is made in connection with the Verified Complaint for Declaratory and Injunctive Relief (the "Complaint") filed by Delaware Recyclable Products, Inc., an affiliate of Waste Management of Delaware, Inc. (collectively, "Waste Management"). I am a senior counsel at Waste Management and have reviewed the foregoing Complaint and declare that the facts contained therein are true and correct to the best of my information, knowledge, and belief upon reasonable inquiry to date.

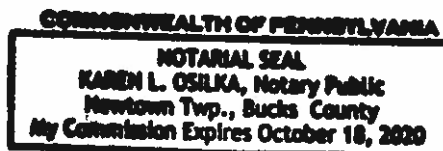
I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

  
Michael Brennan

SWORN TO AND SUBSCRIBED before this 25<sup>th</sup> day of October, 2019.

  
Notary Public

My commission expires: October 18, 2020





**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

DELAWARE RECYCLABLE PRODUCTS, INC., )  
)  
Plaintiff, )  
)  
v. ) C.A. No.  
)  
NEW CASTLE COUNTY, DELAWARE, )  
NEW CASTLE COUNTY COUNCIL, )  
)  
and )  
)  
COUNTY EXECUTIVE MATTHEW S. MEYER, )  
COUNCIL PRESIDENT KAREN HARTLEY-NAGLE, )  
COUNCILMAN KENNETH R. WOODS, )  
COUNCILWOMAN DEE G. DURHAM, )  
COUNCILWOMAN JANET T. KILPATRICK, )  
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COUNCILMAN JEA P. STREET, )  
COUNCILMAN DAVID L. TACKETT, and )  
COUNCILMAN JAMES W. BELL, )  
in their official capacities, )  
)  
Defendants. )

**EXHIBITS A THROUGH I TO VERIFIED COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Sharon Oras Morgan, Esq. (No. 4287)  
Sidney S. Liebesman, Esq. (No. 3702)  
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*Attorneys for Plaintiff*

Date: October 30, 2019

# Exhibit A



**New Castle County Council  
Land Use Committee Meeting**

**August 27, 2019**

**Veritext Legal Solutions**

800.808.4958 | [calendar-de@veritext.com](mailto:calendar-de@veritext.com) |

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New Castle County Council  
Land Use Committee Meeting  
800 French Street, Wilmington, DE 19801  
August 27, 2019

-----x

REPORTED BY: GABRIELLE ATKINSON

1 the areas around the landfill are  
2 significantly lower than the median family  
3 income. Next slide, please. This is  
4 showing you zoning around the landfill.  
5 Again, the landfill is right in the middle  
6 there. The aerial photograph is not colored.  
7 You can see the different colored zones.  
8 I'm not going to go into each of the  
9 different zoning districts here, just to say  
10 it's a residential and commercial zoning  
11 districts around the landfill. There's  
12 [background noise]. Next slide, please.  
13 And now I'm going to turn the time over to  
14 counsel to council. Thank you.

15 MR. CARTER: Before I discuss the  
16 specifics of the ordinance, there are a few  
17 issues that I would like to address. First,  
18 it has been suggested that this ordinance  
19 would only impact the RPI's landfill, but  
20 not other benefits such as Cherry Island.  
21 This is not accurately stated. This  
22 ordinance is intended to regulate all  
23 presently existing landfills, as well as any  
24 landfills that come online in the future.  
25 This is in part of a proactive action by



1 council to address landfills in the county  
2 generally, present and future. Among other  
3 locations, which I'm sure we'll be talking  
4 about in a moment - -, there's been  
5 consideration placing landfills in southern  
6 New Castle County. This ordinance is being  
7 enacted partly with this in mind in any and  
8 all future locations. It's a matter of when,  
9 not if, there will be a future landfill.

10 However, the ordinance regulates only those  
11 landfills overlooks the county's  
12 jurisdiction, number one and two has not  
13 been preempted by law. To this point, there  
14 is only one existing and active landfill  
15 located in New Castle County, and that is  
16 DRPI's. There's been talk about the Cherry  
17 Island landfill not being subject to the  
18 ordinance, and that's true for two reasons.

19 First, Cherry Island is located outside New  
20 Castle County. They're located in the city  
21 of Wilmington and therefore not subject to  
22 county law. Secondly, DSWA, the - - Cherry  
23 Island landfill is an entity created by the  
24 General Assembly, is subject to regulation  
25 by the General Assembly itself, not the

1 county. In particular, Delaware Code, Title  
2 7, Chapter 64, exclude that Cherry Island is  
3 not subject for land use regulations.  
4 Consequently, the County is preempted from  
5 regulating Cherry Island landfill. Point  
6 two, in addition, DNREC and DRPI agreed to  
7 terms of a permit, which is an agreement of  
8 sorts. The express terms of the permit  
9 established that 130 feet would be the final  
10 maximum landfill elevation, was the actual  
11 words. The ordinance would simply hold DRPI  
12 to the agreed-upon terms of the permit  
13 between DRPI and DNREC and the reasonable  
14 expectations based upon that language.  
15 Quite clearly, the ordinance reflects the  
16 intent of the General Assembly and DNREC.  
17 They show a high degree of deference to  
18 County - -, and the exercise of its zoning  
19 these powers headed under direct Delaware  
20 Constitution through the General Assembly to  
21 the counties. Despite the statements of the  
22 - - is not consistent with the permitting  
23 process, the General Assembly and DNREC  
24 noted express in Title 7, Section 6003,  
25 that's also repeated in DNREC's regulations

1 information they've submitted to us, has  
2 been focused on Artesian's defense about the  
3 water quality, but the air quality is just  
4 as important, as has been raised here  
5 tonight, the dust in the residents' homes.  
6 And I think if we leave this article that  
7 was passed around about the slag grinding  
8 facility permit that was just approved by  
9 DNREC shows you unfortunately time after  
10 time DNREC is approving these permits, I  
11 don't think we want to trust them to do the  
12 right thing in this regard. So, I'm proud  
13 to be happy as a co-sponsor of leading this  
14 bill to have the county take a stand, and  
15 hopefully set the stage to future changes  
16 along these lines. Thank you.

17 MS. KILPATRICK: Any other comments  
18 from council? Ms. Diller.

19 MS. DILLER: I just have a technical  
20 question, and I'm wondering if Mr. McGoury  
21 [phonetic] could come up and help with an  
22 answer.

23 MS. KILPATRICK: He's coming.

24 MS. DILLER: Thank you. Mr. McGoury,  
25 I'm just wondering, if we have a conflict

1 with DNREC because of this legislation, what  
2 happens?

3 MR. MCGOURY: Well, did you have a  
4 provision in mind here?

5 MS. DILLER: Well, if we pass this and  
6 DNREC approves the permit, what happens?

7 MR. MCGOURY: Well, the code is quite  
8 clear, Title 7 says that the permit would be  
9 issued subject to county zoning. So, I  
10 think that's putting it on its face. If  
11 they were to take issue with that, then  
12 perhaps there would be a legal action that  
13 would ensue from that, but I don't see any--  
14 there's nothing to suggest that.

15 MS. DILLER: Okay. The other statement  
16 I'd just like to make is that if we're going  
17 to get ourselves into this, I certainly hope  
18 that we're thinking of what kind of staffing  
19 we're going to need to do the monitoring and  
20 evaluation on this sort of thing. I don't  
21 see anybody proposing hiring geologists or  
22 hydrologists. I mean, I certainly think  
23 that would need to happen if we decided to  
24 get into this. I'm just not sure I'm crazy  
25 about the idea of getting into this before

1 we have a plan here. I'm just concerned  
2 about it.

3 MS. KILPATRICK: Comments from council?  
4 Mr. Hollins.

5 MR. HOLLINS: To respond to  
6 Councilwoman Diller, this ordinance has  
7 nothing whatsoever to do with increasing our  
8 staff or anyone else's staff. It just  
9 simply deals with the height of the landfill.  
10 So, it doesn't mean that we're going to now  
11 take over the responsibility of the people  
12 that's operating the landfill. We're  
13 basically saying that we're going to limit  
14 the height; that's all we're doing. Like  
15 any other land use proposal, we're not the  
16 one to go out, we're not the police. DNREC  
17 still has its responsibility. This simply  
18 adds a layer of protection to the residents  
19 of New Castle County that they cannot be  
20 abused by any aggressive landfill that's  
21 going to go beyond the designated height.  
22 That's all this does. We don't hire  
23 geologists or scientists or anyone else. No  
24 one works with New Castle County.

25 MS. DILLER: Well, how do we do

1 enforcement, then?

2 MR. HOLLINS: The height is established.  
3 We do it the same way we do it now. Who do  
4 we hire now to go and enforce height? DNREC  
5 does that. We're working in conjunction  
6 with DNREC. There's a height limitation.  
7 So, we're making that standing. It doesn't  
8 mean that now--we don't do anything with  
9 that landfill today. We don't touch the  
10 wells, we don't send geologists out, we  
11 don't do any of that. So, this ordinance  
12 does not create any more staffing or work or  
13 responsibility to this county. It's like  
14 any other violation. If it goes to court  
15 then we defend the code. We will defend  
16 what's in this legislation, the same way we  
17 defend Pike Creek.

18 MS. KILPATRICK: Mr. Carter?

19 MR. CARTER: Yeah, I just want to  
20 clarify. First-hand experience in DNREC,  
21 the intent of Chapter 60 was to recognize  
22 the zoning rights of - - in the state of  
23 Delaware. Set the zone because the zoning  
24 expertise, with the exception of the coastal  
25 zone, that was different, was to lead with

1 the local government. Once the local  
2 government says it's an appropriate siting  
3 based on zoning, DNREC then in tandem and in  
4 partnership, I think, perhaps, a novel  
5 concept that the state and county work very  
6 closely together and do so in accordance  
7 with this statute which lays it out, would  
8 continue to do that and look at those type  
9 of feasibility issues. What has happened  
10 with many of these sites is DNREC does not  
11 look at adjacent land use and boundaries.  
12 That is the purview of local zoning. So,  
13 these are not separate, we're not hiring  
14 geologists, we are looking at the expertise  
15 of local governments who have land use  
16 authority - - and the expertise DNREC give  
17 where they can have the technical expertise.  
18 So, if this is done in accordance with the  
19 state code and with our county codes, it  
20 will not matter. We will just actually  
21 provide an ordinance that ensures that we  
22 work properly and well together, as I think  
23 was intended by the state law.

24 MS. KILPATRICK: Right now, the zoning  
25 for the site in question is proper. So, we

1 have--if we're looking at compliance with  
2 zoning, period, it is in compliance. We  
3 just don't have any regulations dictating at  
4 this point how we would approve or build a  
5 landfill, and I agree that we need to have  
6 those. But that's--this is retroactive  
7 versus proactive. That's my only--

8 MR. CARTER: [interposing] I don't  
9 think we've engaged the expertise to prove  
10 those, DNREC would do it. Our definition of  
11 heavy industry, 48.214, Section C, "District  
12 shall be located to minimize adverse effects  
13 from neighboring districts such as noise,  
14 air, pollution, and unsightly structures."  
15 So, my rule on this is that by trying to  
16 correct - - we are actually moving the  
17 intent of the land county law as well as  
18 working well with Title 7.

19 MS. KILPATRICK: And we need to correct  
20 the zoning in the fact that we need step-  
21 downs, we need heavy industry. We know we  
22 need industry. We know we need office. We  
23 know we need retail. We know we need  
24 residential. We just have over the decades  
25 done a very poor job of allowing heavy



# **Exhibit B**

Introduced by: Mr. Street, Mr. Carter  
Date of introduction: April 30, 2019

**ORDINANCE NO. 19-046**

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 (“UNIFIED DEVELOPMENT CODE”), ARTICLE 3 (“USE REGULATIONS”) AND ARTICLE 33 (“DEFINITIONS”) REGARDING LANDFILLS**

**WHEREAS**, the zoning regulation established by this Ordinance has been made in accordance with the Comprehensive Development Plan for New Castle County and is designed to avoid transportation congestion, to avoid threats to health and the general welfare, to ensure adequate light and air, to avoid overcrowding of the land, and to safeguard water and sewerage, among other potential concerns; and

**WHEREAS**, the regulation also has been made with reasonable consideration of the character of the relevant zoning district and the suitability for particular uses, with a view to protecting and promoting desirable living conditions, sustaining the stability of neighborhoods, protecting property against blight and depreciation, conserving the property value of homes and buildings, and encouraging the most appropriate use of land and structures in New Castle County; and

**WHEREAS**, New Castle County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests.

**NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 3 (“Use Regulations”), Section 40.03.323. is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 40.03.323. – ~~Reserved~~ Solid Waste Landfills.

In addition to satisfying all other legal requirements and standards, landfills shall conform with the following standards:

- A. Landfills shall not exceed 140 feet in height, as determined pursuant to industry standards, and all requests to increase the landfill height up to and including this maximum shall be subject, first, to an assessment of:
1. The benefits of and need for any proposed height increase;
  2. The impact of such height increase and associated landfill operations on the health of nearby residents;
  3. The impact of such height increase and associated landfill operations on the values of real property in proximity thereto;
  4. The impact on traffic in the surrounding area;

5. The impact on noise and visual blight to the surrounding area;
6. The impact on stormwater, wastewater discharge, and flooding in proximity thereto;
7. All other impacts on the health, safety, and general welfare of nearby residents;
8. The compatibility with the policies and objectives of the Comprehensive Development Plan of New Castle County;
9. The impact of the proposed height increase on immediate residents and neighborhoods and the compatibility therewith, and a comparison of the impact on and compatibility with surrounding residents and neighborhoods; and
10. Whether the benefits of a height increase outweigh the negative impacts.

Section 2. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 3 (“Use Regulations”), Section 40.03.110. (“Use Table”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

...

Section 3. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 33 (“Definitions”), Section 40.33.270. (“Industrial Uses”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 40.33.270. - Industrial uses.

...

- C. *Heavy industry*. This category includes construction, mining, manufacturing, transportation, and public utilities due to the land use intensity impacts typically associated with large industrial uses, their accessory outdoor storage uses, and large building areas. The following uses are permitted:

Animal food, meat product, seafood product manufacturing (NAICS 3111, 3116, 3117)

Tobacco manufacturing (NAICS 3122)

Breweries, wineries, distilleries other than brewery-pubs and craft alcohol production establishments (NAICS 31212, 31213, 31214)

Sawmills (NAICS 3211)

Manufactured home manufacturing (NAICS 321991)

Pulp, paper and paperboard mills (NAICS 3221)

Petroleum refining and related industries (NAICS 324)

Chemical manufacturing, including compost operations (NAICS 325)

Cement manufacturing (NAICS 32731)

Ready-mix concrete manufacturing (NAICS 32732)

Other nonmetallic mineral product manufacturing (NAICS 3279)

Primary metal manufacturing (NAICS 331)

Ammunition (except small arms) manufacturing (NAICS 332993)

Transportation equipment manufacturing (NAICS 336, except 3363, 336991)

Rail and water freight facilities (NAICS 482, 483)

Solid Waste Landfills (NAICS 562212)

Section 4. This Ordinance shall become effective immediately upon its adoption by New Castle County Council and approval of the County Executive, or as otherwise provided in 9 *Del. C. Section 1156*.

Adopted by County Council of  
New Castle County on:

---

President of County Council  
of New Castle County

Approved on:

---

County Executive  
New Castle County

**SYNOPSIS:** This Ordinance establishes that *Solid Waste Landfills* (NAICS 562212) shall not exceed 140 feet in height, as determined pursuant to industry standards, and all requests to increase the landfill height up to and including this maximum shall be subject, first, to an assessment of:

- The benefits of and need for any proposed height increase; the impact of such height increase and associated landfill operations on the health of nearby residents; the impact of such height increase and associated landfill operations on the values of real property in proximity thereto; the impact on traffic in the surrounding area; the impact on noise and visual blight to the surrounding area; the impact on stormwater, wastewater discharge, and flooding in proximity thereto; all other impacts on the health, safety, and general welfare of nearby residents and neighborhoods; the compatibility with the policies and objectives of the Comprehensive Development Plan of New Castle County; the impact of the proposed height increase on immediate residents and neighborhoods and the compatibility therewith, and a comparison of the impact on and compatibility with surrounding neighborhoods; and whether the benefits of a height increase outweigh the negative impacts.

In addition, this Ordinance clarifies that a *Solid Waste Landfill* (NAICS 562212) is a permissible use in a Heavy Industry zoning district.

Furthermore, the zoning regulation established by this Ordinance has been made in accordance with the Comprehensive Development Plan for New Castle County and is designed to avoid transportation congestion, to avoid threats to health and the general welfare, to ensure adequate light and air, to avoid overcrowding of the land, and to safeguard water and sewerage, among other important concerns.

The regulation also has been made with reasonable consideration of the character of the relevant zoning district and the suitability for particular uses, with a view to protecting and promoting desirable living conditions, sustaining the stability of neighborhoods, protecting property against blight and depreciation, conserving the property value of homes and buildings, and encouraging the most appropriate use of land and structures in New Castle County

**FISCAL NOTE:** There is no discernible fiscal note.

# Exhibit C



**New Castle County Council Meeting**

**August 27, 2019**

**Veritext Legal Solutions**

800.808.4958 | [calendar-de@veritext.com](mailto:calendar-de@veritext.com) |

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New Castle County Council  
City Council Committee  
800 French Street, Wilmington, DE 19801

-----x

REPORTED BY: LISAANN FROMERT  
CHRISTINA J. COX



1 MS. JANET KILPATRICK: Here.

2 MADAM CLERK: Mr. Sheldon?

3 MR. TIMOTHY SHELDON: Yes. Here.

4 MADAM CLERK: Mr. Smiley?

5 MR. GEORGE SMILEY: Here.

6 MADAM CLERK: Mr. Street?

7 MR. JEA P. STREET: Here.

8 MADAM CLERK: Mr. Tackett?

9 MR. DAVID TACKETT: Here.

10 MADAM CLERK: Mr. Woods?

11 MR. KENNETH R. WOODS: Here.

12 MADAM CLERK: Madam, presented the  
13 role; we have 12 present, one absent.

14 PRESIDENT HARTLEY-NAGLE: Thank you.  
15 Mr. Sheldon, did you just sit down?

16 MR. SHELDON: What?

17 PRESIDENT HARTLEY-NAGLE: I wasn't sure  
18 if you just entered or just--

19 MR. SHELDON: No. I was here.

20 PRESIDENT HARTLEY-NAGLE: You were  
21 already here. Okay.

22 MR. SHELDON: I usually brought the  
23 teacher an apple when we returned back to  
24 school. Next time I will.

25 PRESIDENT HARTLEY-NAGLE: Councilwoman

1 Diller entered the room. Thank you.

2 MALE VOICE: All rise.

3 PRESIDENT HARTLEY-NAGLE: Is there a  
4 motion to correct or amend the minutes of  
5 July 23rd, 2019?

6 MALE VOICE: Motion approved.  
7 Distributed.

8 MALE VOICE: Seconded.

9 PRESIDENT HARTLEY-NAGLE: The motion is  
10 passed. Is there a motion--

11 MALE VOICE: - -.

12 PRESIDENT HARTLEY-NAGLE: Second? All  
13 in favor?

14 SEVERAL VOICES: Aye.

15 PRESIDENT HARTLEY-NAGLE: Any opposed?  
16 The minutes are approved. Announcements  
17 from members of council and--Mr. Sheldon--

18 MR. SMILEY: Motion to go out of order  
19 to conduct a--

20 PRESIDENT HARTLEY-NAGLE: Yes, Mr.  
21 Smiley.

22 MR. SMILEY: Thank you.

23 PRESIDENT HARTLEY-NAGLE: I would have  
24 called on you just a few seconds more.

25 MR. SMILEY: I thought you were ready

1 Diller entered the room. Thank you.

2 MALE VOICE: All rise.

3 PRESIDENT HARTLEY-NAGLE: Is there a  
4 motion to correct or amend the minutes of  
5 July 23rd, 2019?

6 MALE VOICE: Motion approved.  
7 Distributed.

8 MALE VOICE: Seconded.

9 PRESIDENT HARTLEY-NAGLE: The motion is  
10 passed. Is there a motion--

11 MALE VOICE: - - .

12 PRESIDENT HARTLEY-NAGLE: Second? All  
13 in favor?

14 SEVERAL VOICES: Aye.

15 PRESIDENT HARTLEY-NAGLE: Any opposed?  
16 The minutes are approved. Announcements  
17 from members of council and--Mr. Sheldon--

18 MR. SMILEY: Motion to go out of order  
19 to conduct a--

20 PRESIDENT HARTLEY-NAGLE: Yes, Mr.  
21 Smiley.

22 MR. SMILEY: Thank you.

23 PRESIDENT HARTLEY-NAGLE: I would have  
24 called on you just a few seconds more.

25 MR. SMILEY: I thought you were ready

1 to call announcements. That's why I wanted  
2 to go in order before now. Okay. To make a  
3 motion--in light of councils--having a short  
4 break in the agenda we have in this evening,  
5 I make a motion to suspend with 5.4 so that  
6 we can actively discuss and vote on all  
7 legislation listed on this evening council  
8 agenda.

9 MALE VOICE: Second.

10 PRESIDENT HARTLEY-NAGLE: All in favor?

11 SEVERAL VOICES: Aye.

12 PRESIDENT HARTLEY-NAGLE: Any opposed?

13 The motion is passed. Next I move to  
14 suspend the rules to allow to move ordinance  
15 19-046 to the end of the agenda. Is there a  
16 second?

17 SEVERAL VOICES: Second.

18 PRESIDENT HARTLEY-NAGLE: All in favor?

19 SEVERAL VOICES: Aye.

20 PRESIDENT HARTLEY-NAGLE: Any opposed?

21 The motion is passed. Are there any other  
22 announcements from members of council? Mr.  
23 Bell?

24 MR. BELLS: Madam President, Ordinance  
25 17-095, 17-096 remains tabled this evening.

1 And I said to you all today you are the  
2 councilmen and this was in your district  
3 what would you do? When DNREC's turn its  
4 back. When governments have turned their  
5 back. What would you do and what would you  
6 expect council to do? And at this point  
7 before I get emotionally out of control  
8 again, I want to call on Land Use and  
9 council to go over where we are.

10 PRESIDENT HARTLEY-NAGLE: Before they  
11 come up, Mr. Street, I'm going to make some  
12 remarks. You had asked what would you do if  
13 you represented the people that you  
14 represent. Well, I do represent the people  
15 that you represent. I represent the entire  
16 county and all the constituents that are  
17 affected. And I've got to tell you, over  
18 this last two months I received between 500  
19 and 1,000 emails, phone calls. I've called  
20 back a lot of people. I've met a lot of  
21 people. And many of the people in here I  
22 occasionally spoke with. I spoke with the  
23 engineering firm, Waste Management, anybody  
24 I could, I called the EPA and talked with  
25 them. And I've called Senator Carper's

1 [phonetic] office and I'm set up we're going  
2 to communicate tomorrow about this, because  
3 it was bigger. I'm not going to talk about  
4 all the issues on the landfill, because  
5 other people will be doing that. I'm going  
6 to be talking about the one that has me  
7 really upset. Because almost every--well,  
8 every email, and every conversation has been  
9 about the contamination of our drinking  
10 water. And we're upset about that. I've  
11 got four grandchildren. I've got a  
12 granddaughter. I want them to be able to  
13 live here in New Castle County. I want them  
14 to feel safe and I want to feel safe as well  
15 as have every one of my constituents feel  
16 safe in drinking the drinking water. So, I  
17 talk to everybody. And what I found out is  
18 that in all likelihood there's a number of  
19 issues that have to do with why or why not  
20 the drinking water may or may not be  
21 contaminated. But it is less likely, it  
22 looks like, to be Waste Management, the  
23 other areas. And what is most upsetting is  
24 my emails are coming from all over the  
25 county. The entire county believes that



1    their drinking water is contaminated.    And  
2    that probably is not true.    And so to have  
3    put that out, I don't think was very  
4    responsible to dream it up so much that  
5    people are frightened to drink the water.  
6    We needed to do more investigation and we  
7    needed to have a lot more information about  
8    what was happening and we're not talking  
9    about the other issues that may have--be  
10   with the landfill because I know there's a  
11   number of other people that have talked to  
12   that, but the water is important to me.    And  
13   what are we going to do about it?    Because  
14   it looked like the other - - sites.    So last  
15   night I wrote some of something I'm going to  
16   do.    I am going to take action on this and I  
17   feel we should be doing this, and I'm asking  
18   for a congressional delegation to hop in on  
19   this too, and to be supportive.    But the  
20   permit for this industrial landfill, Waste  
21   Management and our communities has brought  
22   to our attention the existence of future  
23   threats that to the Artesian well field.  
24   And I think the determination for this  
25   landfill will pollute the water supply but

1 that's the responsibility of - -. We need  
2 the State of Delaware to evaluate the threat  
3 of this landfill. Further, the  
4 consideration of this permit has increased  
5 our awareness and concern for the existing  
6 and future pollution threats to our water  
7 supply. We can't limit our attention to  
8 just the Waste Management landfill, which is  
9 many miles from the Artesian well field, the  
10 ones I'm going to speak about are very close.  
11 There are a number of contamination sources  
12 of the Artesian well field much closer than  
13 the land management landfill. They include  
14 the Army Creek Landfill superfund site. The  
15 Tybouts Corner Landfill superfund site. The  
16 Delaware Sand Landfill superfund site. And  
17 the reported water contamination from the  
18 Mid Castle Airport. While we clearly need  
19 to assess existing and future threats of the  
20 Waste Management landfill, it would be  
21 indefensible not to evaluate the threat of  
22 sources much closer to the Artesian well  
23 field. I will both propose that a technical  
24 study of all potential threats to the  
25 Artesian well field be created. I suggest



1 application should not be allowed to proceed,  
2 and in fact, this ordinance should proceed.  
3 I'll just leave you with just a couple of  
4 key points. Clearly the Planning Board  
5 heard hours and hours of testimony. A  
6 number of you were at that hearing, God  
7 bless you, and so I won't reiterate that.  
8 But the Planning Board, after hearing all  
9 this information, including a very lengthy  
10 presentation by DRPI voted six-to-nothing to  
11 support this ordinance, and I think that's  
12 very telling. But just to leave you with  
13 just a couple of facts, the original  
14 landfill that was known as the Patrella  
15 [phonetic] Landfill, somewhere between 6 and  
16 10 acres, and that portion of landfill is  
17 unlined. And that landfill grew up in the  
18 era of Army Creek and Langola [phonetic] and  
19 we all know what happened there. We don't  
20 believe that that portion of the landfill  
21 has been adequately monitored to reflect the  
22 conditions in the Potomac. You will hear  
23 Waste Management in their letter to you  
24 argue that the Potomac clays in their own  
25 well looks to be 4 feet or less beneath the

1 can see that the incomes are significantly  
2 below average for the county in those  
3 communities surrounding the landfill. You  
4 can see 58,000, 40,000, all the way down to  
5 34,000 over to your right of this slide  
6 there. Next, please. And this is showing  
7 you basically the same map, but a different  
8 view. This is showing you the zoning around  
9 the landfill. Again, the landfill is in the  
10 know. That yellow line around it, and the  
11 zoning around there--the zoning landfill  
12 itself is HI, so heavy industry, that's the  
13 zoning that's there in place, and that's  
14 what the draft board seeks to amend what  
15 that zoning allows there, and the conditions  
16 therein. But the zoning surrounding the  
17 area is a mix of retail commercial and  
18 residential type zoning districts, for the  
19 most part, those zoning districts around the  
20 landfill. And now I'm going to turn it over  
21 to council. Council. Thank you.

22 MR. MIKE MIGLIORE: Thank you. Good  
23 evening. Mike Migliore, council to council.  
24 Before I discuss the specifics of the  
25 ordinance, I'll address several topics,

1 primarily - - in nature. The first being  
2 that it's been suggested that the ordinance  
3 is directed at only DRPI's landfill, but not  
4 other landfills such as Cherry Island  
5 Landfill. This is not accurately stated.  
6 The ordinance was created to set regulations  
7 around the landfills as a whole, generally  
8 for the county; both for existing as well as  
9 future landfills. Among other indications  
10 as you may know, within recent years, there  
11 have been essential task force looking at  
12 various locations throughout the state-  
13 throughout New Castle County, pardon me,  
14 looking to cite additional landfills. Going  
15 to the point pertaining to why Cherry Island  
16 and DSWA are not regulated by the ordinance.  
17 That's simple. Two reasons. Number one,  
18 Cherry Island is not located in New Castle  
19 County. It's located in the corporate  
20 limits in the City of Wilmington and  
21 therefore not subject to New Castle County  
22 law. And number two, Title 7 makes it clear  
23 that the DSWA is an entity or creation of  
24 the state as subject to regulation by the  
25 state. Specifically, Title 7 makes it known

1     that it's not subject to land use  
2     regulations. Point two, in addition, DNREC  
3     and DRPI, in the terms of the permit, the  
4     most recent one, currently in effect,  
5     expressed terms of a permit note that the  
6     130--in establishing the height of 130 feet  
7     in that that height would be, and this is  
8     quote, "final maximum landfill elevation,"  
9     end quote. So, frankly, the limits would  
10    simply hold the DRPI to the agreed upon  
11    terms and there is no expectations of that  
12    language. Third, the ordinance reflects the  
13    intent of the general assembly in DNREC.  
14    They show a high degree of deference to - -.  
15    In the exercise of the county's zoning - -  
16    under the Delaware constitution through the  
17    general assembly to the counties. Just  
18    slight misstatement that the ordinance is  
19    not consistent with the permit in process  
20    the general assembly in DNREC permitted  
21    expressed in Title 7, Section 6003 and it's  
22    repeated in DNREC's regulations but landfill  
23    permits are expressly subject to the  
24    county's zoning laws. And no permit can be  
25    issued by DNREC unless the county first

1 approves the landfill. It's consistent with  
2 its zoning. Fourth, it's been suggested  
3 that the process-it's not clear,  
4 specifically, that it's a landfill act, but  
5 presumably DRPIs are referring to public  
6 notice and public meetings was somehow  
7 insufficient. In fact, the process was more  
8 robust than is required by the law. But not  
9 only compliant with the minimal requirements  
10 related to UDC text amendments, but they  
11 also provide an additional legal notice in  
12 the following ways. First, under state law  
13 of a lead sponsor, have the right to bring  
14 the ordinance to council for consideration  
15 and vote within 45 days of introduction.  
16 Given that the ordinance was introduced at  
17 the end of April, that means it could have  
18 been seen as soon as early as June, but  
19 there was a specific determination not to do  
20 that. The determination was to allow for  
21 robust or a comment and a robust record.  
22 Secondly, if I understood right, - - was not  
23 required to send ordinance to state planning  
24 if the board made a fuss, but for the same  
25 reasons as I noted again, to create a robust

1 record and understood send the ordinance  
2 over to robust for review. Third, the  
3 ordinance has had a great deal like an  
4 unusual amount of - - due in part to the  
5 ordinance being discussed at DNREC's public  
6 meeting at the end of May. And finally,  
7 notice under state law after the ordinance  
8 was created and required. Specifically, the  
9 clerk of council noticed that it gave notice  
10 to the - - of the ordinance - - as required  
11 under law. So, the most procedures and the  
12 due process are greater than, frankly, is  
13 required under law, and that was intentional.  
14 Fifth, I'll talk about at least one of the  
15 reasons for the setting the height at 140  
16 feet and some other council members will  
17 probably speak to additional reasons that  
18 were considered. The first consideration--  
19 well, one of the considerations, rather, was  
20 the maximum height would allow for existing  
21 manifest subject to council jurisdiction to  
22 go up to 140 feet. In the case of DRPI,  
23 this would allow them to increase the  
24 landfill height by an additional ten feet  
25 and they approved 130 to 140. The intent



1 behind this was to strike the reasonable  
2 balance between council's concerns related  
3 to health, wealth and safety of the  
4 surrounding neighborhoods by allowing DRPI  
5 time to reasonably continue with its  
6 business and continuing individuals, as well,  
7 allowing for sufficient time to transition  
8 operations in a smooth transition of fill to  
9 other locations. - - to use the site for  
10 other admissible purposes. That was the  
11 comments made to the sponsors of the  
12 legislation and I think they took that to  
13 heart as far as consideration of jobs. And  
14 because of that that's the reason why the  
15 sponsors decided to go for what's a  
16 reasonable meeting of the minds, if you will,  
17 to allow for an increase in the height, but  
18 that striking the balance with the concerns  
19 about health. Based on - - DRPI submission  
20 to DNREC noting that they were in excess of  
21 two - - they're similar now to what the DRPI  
22 implied in their application; their 2015  
23 application provided for an increase of 40  
24 feet, approximately over a ten-year time  
25 span. Thus, - - increase of approximately

1 four feet per year. Therefore, allowing the  
2 whole increase of up to ten feet would allow  
3 for up to an additional two and a half years  
4 of life at the current site. That's in  
5 addition to DRPI's estimation in their  
6 application of approximately a little over  
7 two years between the aggregated - - could  
8 be somewhere around three to four years life  
9 span at the site. Furthermore, as I  
10 mentioned before with the proposed, that's  
11 reasonable especially given the back - -  
12 that DRPI agreed as part of its permit as  
13 130 feet would be the final maximum  
14 elevation of the landfill. Next point, DRPI  
15 contends that they have a vested right. I'm  
16 not going to debate that issue and I would  
17 mention it for argument sake and assuming I  
18 make it for argument sake that they do, - -  
19 address the issue of vested rights numerous  
20 times as raised last year, just a year ago.  
21 And in the opinion noted that general  
22 property owners - - vested right to have an  
23 existing general classification where an  
24 existing ordinance continuing unchanged if -  
25 - the government - - exercises its first



1     that's what is going to end up happening.  
2     We bring out hundreds of volunteers every  
3     year for Christina clean up. Just heard  
4     earlier about the trash in the Rose Park  
5     area and we clean up a lot of that trash too  
6     in our clean ups. But, obviously, this  
7     issue is much bigger than that, but that's  
8     something that we haven't heard that I  
9     wanted to bring up. So, we are in support  
10    of this ordinance. Personally, I am in  
11    support of this ordinance too. We'd just  
12    like to say that I've heard a lot of good  
13    things here tonight that I support, which is  
14    a more comprehensive look at water issues.  
15    I think we definitely need that. The  
16    monitoring that we talked about, why are we  
17    just starting to do that air monitoring now.  
18    looking at more comprehensive things for  
19    landfills. Why don't we look at landscaping  
20    and all of these things? SO, I hope those  
21    are things that get followed up on. But I  
22    think for tonight, the important thing is I  
23    was surprised that there are no limits on  
24    the size of a landfill until now. I think  
25    that's a completely appropriate thing for a

1 community to do with the learning to make  
2 the community we want it to be. I think  
3 that's what this is really about and so I  
4 would urge you to pass this ordinance.  
5 Thank you.

6 PRESIDENT HARTLEY-NAGLE: No clapping,  
7 please. Thank you very much. Are there any  
8 more speakers? It looks like none. Could  
9 we ask if there's any comments or questions  
10 from council you want to follow up on? Mr.  
11 Cartier?

12 MR. CARTIER: Thank you. We've heard a  
13 lot of different sides of the issue. I'm  
14 going to focus on what our role here is in  
15 county government in terms of land use and  
16 planning and zoning. I think this ordinance  
17 is well within the zoning powers granted to  
18 the county government by the state. This  
19 zoning regulation I'm reading of a synopsis  
20 is established zoning regulations  
21 established by this ordinance have been in  
22 accordance with the comprehensive  
23 development plan for New Castle County. It  
24 was designed to avoid transportation  
25 congestion, to avoid threats to health, and

1 the general welfare to ensure adequate light  
2 and air, to avoid overcrowding on land, and  
3 to safeguard water. It's also about  
4 promoting desirable living conditions,  
5 sustaining stability of neighborhoods,  
6 protecting properties against plight and  
7 depreciation, and conserving the property  
8 value of homes and buildings. So, it's well  
9 within our power to do this. Is it perfect?  
10 Is it comprehensive? No. But we certainly  
11 can begin that process and I say we begin  
12 that process with using our general  
13 authority regarding landfills tonight.

14 PRESIDENT HARTLEY-NAGLE: Thank you.  
15 Mr. Carter?

16 MR. CARTER: Yes. Thank you, Madam  
17 President. What I do want to do is to  
18 ensure that I have a moment here to put  
19 about 15 documents onto the record.  
20 Starting with a testimony that we had at the  
21 New Castle Claim Board that chronicles 30  
22 years of work and coordination in trying to  
23 work with different people in this area,  
24 recognizing and their technical  
25 understanding of why this is problematic. I

1 think that's very important. And there are  
2 some supplemental documents that go with  
3 that. Our report of the governor's  
4 taskforce in 1994, Recognition Number 5,  
5 List of Code 2, to do away with all  
6 landfills in this area of the river. I'd  
7 also like to mention the South Wilmington  
8 Special Management Plan that dealt very much  
9 so with a lot of industrial land nearby.  
10 These begin to show the evolution of our  
11 planning in this region and for which our  
12 zoning is not involved with., leading to  
13 this code change. Then, finally, the  
14 community - - document - - but so well  
15 captures many of the concerns of health and  
16 safety and welfare. Also, the real impacts  
17 of transportation where they have not spoken  
18 to a lot. These communities are sandwiched  
19 between several interstates. You've got the  
20 additional truck traffic and diesel  
21 emissions coming out that can add harm to  
22 that. Making this even worse, because it  
23 has the highest rates of that in the area.  
24 All of this contributes to it. I also  
25 wanted to ensure that I included the



1 conservation corridor. That gives us an  
2 idea of where we have the - - canal, how  
3 it's impacted, how the sites are there. I  
4 did include the executive orders as  
5 background that's been done leading to the  
6 division of this. So, what we have is that  
7 history, 30 years of trying to deal with the  
8 issues in this area. I would include the  
9 PowerPoint that I have that I put together  
10 that for clarification is on the ordinances,  
11 looking at some of the landfills. For  
12 instance, you talk about the websites that I  
13 think you have on the supervised sites.  
14 There were some gravel and others. I looked  
15 at those. I actually went and reviewed  
16 those environmental impact statements for  
17 those landfills when they became super clean  
18 sites. And it talks a little bit about the  
19 deactivated. Also, allowing the elevation  
20 data. When I looked at a lot of those  
21 locations, physically in size, that could be  
22 potential targets, like some areas of larger  
23 farms around these correctional center in  
24 our district and I have no doubt that one of  
25 the areas that has been looked at and passed

1 would be whether or not that's an  
2 appropriate place for a future landfill. I  
3 also included for reference the regulations  
4 governing solid waste. These do not go  
5 along. It's important to look at them.  
6 There's a lot of the types of acts and other  
7 things. Once we get through our zoning, I  
8 think we should be referring and have on  
9 record a copy of those regulations. Many of  
10 the questions that we talked about and  
11 reviewed during the final moments, I think  
12 we have a first look at what was DNREC  
13 supposed to do and then we can decide  
14 whether or not we have confidence for them  
15 to follow up with the rest. As it's in the  
16 law, in the regulations, there's nothing to  
17 do as a safeguard for our citizens. A lot  
18 of talk about recycling and other things and  
19 we need to coordinate. We do have a  
20 statutory required stellar state, a  
21 statewide solid Waste Management plan that  
22 addresses that. I do believe that that has  
23 been updated. It was last updated the last  
24 time this controversy was run by permit I  
25 believe. But it gives us a lot of guidance



1 for the statutory tried, not just  
2 negotiating, talking back and forth. I  
3 include a copy of Southern Delaware Code  
4 Chapter 60, Environmental Control, 6003,  
5 that clarifies our role as a zoning agency  
6 and how that is the perfect guides to as a  
7 prerequisite step for the permanence of that.  
8 So, we have that on record and are very  
9 clear about it. I will include at least a  
10 number of us from council our supplemental  
11 record to an incoming hearing to the DNREC  
12 permit application that highlights some of  
13 the problems and some of the other issues  
14 and things and there are some exceedances  
15 and other problems that occurred at this  
16 site. I have included a copy of Agency  
17 Section 48-2242, heavy industry districts  
18 and how they're defined and seen basically.  
19 Basically, the loading resource that issued  
20 the heavy use and was located away from  
21 residential areas. So, I think the meaning  
22 of this ordinance could lean closer to what  
23 our law says we should do. Northern  
24 Delaware Code Chapter 26 talks about zoning  
25 for the purposes and the powers and I made a

1 I'm not lying to you. They're the worst.  
2 They're actually holding up a recycle center,  
3 so we can recycle more down in Newark.  
4 Believe it or not, they're taking, they want  
5 fees. I won't get into it, because that's a  
6 possible lawsuit. But, I'm telling you they  
7 have stopped the recycling in Newark that we  
8 are trying to do. Look, I'm on the solid  
9 waste authority board. I'm very proud to be  
10 the vice chair of the board of directors of  
11 solid waste. I get paid zero. I go all the  
12 way down to Dover on Thursdays, the second  
13 and fourth Thursdays, come back and go to  
14 civic meetings afterwards. I don't even get  
15 a dinner. So, I just want to let everyone,  
16 and I'm setting this up, because there is  
17 lawyers in the room, so I'm going to read  
18 from a lawyer. Since the DSWA stands to  
19 benefit financially in this bill, I just  
20 want everybody to know that all of the, it's  
21 \$40 a ton of waste managing, it's \$88 a ton  
22 at Cherry Island. So, when we go and we're  
23 bidding jobs in the county and we're over  
24 budget, it's not because of apprentices,  
25 drug problems or drug testing. This could



1 MS. DURHAM: Thank you. Two quick  
2 things. I just wanted to also thank  
3 everyone for coming out. I do know of one  
4 expert witness from the New Castle County  
5 Board of Realtors who had to cut out due to  
6 the late hour. He was going to testify  
7 regarding the Route 9 plan that Councilman  
8 Carter mentioned, so I just wanted to put  
9 that on the record and he asked if he might  
10 be able to submit something in the next  
11 couple of days in writing to supplement the  
12 record in terms of real estate values in the  
13 surrounding area and the Route 9 corridor.  
14 So, I don't know if that's possible.

15 PRESIDENT HARTLEY-NAGLE: Yes.

16 MS. DURHAM: I will let him know.  
17 Thank you. And, secondly, I just wanted to  
18 mention that this ordinance 19-046 is  
19 complimentary in quite a few ways to the  
20 county's comprehensive plan. I mentioned  
21 some things in the land use committee  
22 meeting, but certainly in regards to our  
23 alignment with the Clean Air Act and the  
24 Clean Water Act and Clean Air Debris. That  
25 sort of thing. This ordinance is definitely

1 in line with the comp plan and is just one  
2 of many reasons why it should be supported.

3 PRESIDENT HARTLEY-NAGLE: Thank you.  
4 And if anybody in the public also has  
5 anything they would like to add, please  
6 submit it by the close of the work day on  
7 Friday. So, you can still submit anything  
8 in writing. Are there any other council  
9 people that wish to speak?

10 MALE VOICE: Yeah. We're forgetting  
11 one very important component of county  
12 government and that is that when we take a  
13 look at council, the legislative branch, our  
14 administrative branch, our county executive,  
15 the administration, as well as our land use  
16 management team have played an important  
17 part in supporting Councilman Street and  
18 others on this legislature.

19 PRESIDENT HARTLEY-NAGLE: Mr. Smiley?

20 MR. SMILEY: I'm gonna make a  
21 clarification and I guess the question for  
22 council, the council, as we're traveling  
23 down a new road here tonight. Normally your  
24 board commissions and everything else, state  
25 legislature, when you leave a record open

1 in writing. Are there any other council  
2 people that wish to speak?

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14 clarification and I guess the question for  
15 council, the council, as we're traveling  
16 down a new road here tonight. Normally your  
17 board commissions and everything else, state  
18 legislature, when you leave a record open  
19 for submissions, it's so that that  
20 information can be taken into account before  
21 decisions are made. We're making our  
22 decision tonight. When we vote, our record  
23 is closed. So, I don't want to falsely lead  
24 someone to believe and this council start  
25 down this road where we're conducting votes

1 and we've got documents coming in for  
2 periods on end. The purpose of keeping a  
3 record open is to obtain additional  
4 information that those that --

5 PRESIDENT HARTLEY-NAGLE: [Interposing]

6 And, Councilman --, can address that.

7 Which, it is to clarify things.

8 MR. SMILEY: I guess I'm out of order,  
9 because I backed up while I was speaking.

10 PRESIDENT HARTLEY-NAGLE: You did.

11 MR. SMILEY: I don't want to be rude to  
12 anyone. But, go ahead, please.

13 MALE VOICE 2: Councilman, I agree with  
14 you in the late hour. I would say that I  
15 misspoke, so anything you have that was,  
16 should be submitted tonight.

17 MR. SMILEY: Prior to the vote.

18 MALE VOICE 2: Yes. Anything that's  
19 been used as part of consideration.

20 PRESIDENT HARTLEY-NAGLE: Thank you.  
21 It's a late night and now it's  
22 understandable, Mr. --.

23 MR. MIGLIORE: Thank you.

24 PRESIDENT HARTLEY-NAGLE: Thank you.

25 Are there any other comments? Seeing none,



1     okay.

2             MR. MIGLIORE:   Councilman Street.

3             PRESIDENT HARTLEY-NAGLE:   Councilman  
4     Street?

5             MR. STREET:   I'm following in the  
6     footsteps of my mother who was active in the  
7     community and after being - - active in the  
8     home, speaking to council.   In her later  
9     years, she said, son, when you see a good  
10    fight get in it.   Well, I got in it.   At  
11    this point, I've given it my best shot for  
12    the night.   With the council, I call for a  
13    vote.

14            PRESIDENT HARTLEY-NAGLE:   One last time,  
15    no clapping.   Okay.   Madam Clerk, please  
16    call the roll on Ordinance 19-047 as amended  
17    by floor number, number 1.   Oh, 046.   It's  
18    late.

19            MADAM CLERK:   Mr. Bell?

20            MR. BELL:    Yes.

21            MADAM CLERK:   Mr. Carter?

22            MR. CARTER:   Yes.

23            MADAM CLERK:   Mr. Cartier?

24            MR. CARTIER:   Yes.

25            MADAM CLERK:   Ms. Diller?

1 MS. DILLER: Reluctantly, yes.

2 MADAM CLERK: Ms. Durham?

3 MS. DURHAM: Yes.

4 MADAM CLERK: Ms. Hartley-Nagle?

5 PRESIDENT HARTLEY-NAGLE: Yes.

6 MADAM CLERK: Mr. Hollins?

7 MR. HOLLINS: Yes.

8 MADAM CLERK: Ms. Kilpatrick?

9 MS. KILPATRICK: Abstaining.

10 MADAM CLERK: Mr. Sheldon?

11 MR. SHELDON: Reluctantly, I have to

12 abstain.

13 MADAM CLERK: Mr. Smiley?

14 MR. SMILEY: Yes.

15 MADAM CLERK: Mr. Street?

16 MR. STREET: Yes.

17 MADAM CLERK: Mr. Tackett?

18 MR. TACKETT: Yeah. We had a very

19 emotionally energy charged night. A lot of

20 questions. A lot of things were brought up.

21 A lot of issues were addressed. We have a

22 lot of commitment to bring some legislation

23 forward, hopefully really soon. I'm coping

24 Councilman Carter will do that with the

25 magnitude of information that he's presented

1     tonight that we weren't actually able to  
2     read, but he wanted into the record.

3             MR. CARTER:   Well, it was all sort of  
4     it.

5             MR. TACKETT:   And since George already  
6     said that we can't count on DNREC, I'm gonna  
7     go ahead and vote yes.

8             MADAM CLERK:   Mr. Woods?

9             MR. WOODS:    Yes.

10            MADAM CLERK:   Madam President, the roll  
11     is 11 yes, 2 not voting.

12            MR. WOODS:    And, Madam President, you  
13     should have called Councilman Smiley out of  
14     order.

15            PRESIDENT HARTLEY-NAGLE:   I'm sure many  
16     times.

17            MR. SMILEY:    Not the first.

18            PRESIDENT HARTLEY-NAGLE:   Wait, wait,  
19     wait.   Ordinance 19-046 as amended by Floor  
20     Number 1, has passed.   No clapping.   Thank  
21     you.   Thank you, everyone.

22            MR. CARTIER:   I want to vote on  
23     [background noise].

24            MR. CARTER:    Second.

25            PRESIDENT HARTLEY-NAGLE:   All in favor?

# **Exhibit D**





## **SECTION 40.03.210 BUFFERING, LOCATION, BULK, AND SCALE STANDARDS**

Table 40.03.210 provides standards that increase the degree of buffering, govern the location, and reduce the bulk or scale of limited or special uses. The meaning of the different categories contained in the Table is established as follows:

- A. **Location.** This column refers to the bufferyard location if it is different than normal district boundary bufferyards. "All" indicates the entire property is surrounded. Other designations set specific locations on site or uses to be buffered.
- B. **Increased width/opacity.** This column refers to the amount by which the bufferyard opacity required in Table 40.04.111 shall be increased. The use is responsible for the increased bufferyard. In some cases, a distance is to be added to the bufferyard width regardless of the options selected in Section 40.23.140 or Section 40.23.141 .
- C. **Fence.** The use shall provide a fence of certain height within the bufferyard. The fence is to be added to the buffer option in Section 40.23.140 or Section 40.23.141 . Where an option already requires a fence of lower height, the developer may use that option by increasing the fence height. Where a fence of the required height is contained within the options, the developer shall use an option that does not require a fence and add the fence.
- D. **Uses separated.** This column lists protected uses from which the limited or special use is to be separated. Residential, religious institutions, and schools are typical protected uses.
- E. **Spacing.** The use shall be separated from protected uses by a minimum distance.
- F. **Minimum spacing.** This requires a minimum distance between the next similar use. This requirement prohibits certain uses from concentrating in any given area and includes uses located outside the zoning district boundary. Some uses tend to cluster at intersections. This marketing practice is appropriate; therefore, a provision has been made to permit such clustering. Where "int" is found after the spacing distance in the column, uses may locate at any of the intersection corners. However, the intersection where these uses exist must be separated by the specified distance.
- G. **Minimum site area.** The use must have a certain minimum site area. In several cases, this column has also been used to indicate a maximum site size or a range of minimum and maximum sizes.
- H. **Minimum access.** The use may be built only where it has adequate frontage on a street of a certain type (e.g., arterial, collector or nonresidential local street).

I. **Maximum size.** This standard limits the use's size to less than that permitted in Table 40.04.110.

J. **Maximum height.** This standard sets a limit relative to the building's maximum height. An exception is granted for chimneys, steeples, cupolas, and antennas, provided that they occupy no more than seven (7) percent of the roof area.

K. **Other.** This column contains short requirements and/or references to other sections where specific standards are found.

<b>Table 40.03.210</b> <b>LIMITED AND SPECIAL USE STANDARDS</b> <b>Part A - Buffer Standards</b>					
Land Use	Bufferyards			Separation	
	Location	Increase Opacity or Width	Fence or Berm	Use Protected	Distance from Use to Protected Parcel
<b>Agricultural</b>					
Agriculture					
Clearing					
Farmstead					
Farm market					
Commercial stables					
<b>Residential</b>					
Single-family, detached					
Open space subdivision, Option 1					
Open space subdivision, Option 2					
Single-family, attached					
Open space planned					
Apartments					
Apartment conversions					
Commercial apartments					
Hamlet					
Village					
Group home					
Manufactured home park	all borders	0.4 (25ft.)			
Small single-family					
<b>Home Uses</b>					
Day care, family/large family					
Home occupation					
Home business					
Cottage industry					
<b>Institutional</b>					
Assembly and worship					
Schools					

Colleges					
Institutional, regional					
Institutional, neighborhood					
Institutional, residential (Type I)					
Institutional, residential (Type II)					
Protective care	Residential	0.3	10 ft.	Residential	500 ft.
Public service					
Hospitals					
Commercial					
Adaptive reuse, historic building					
Adult uses					
Agricultural support and other rural services					
Bed and breakfast					
Commercial lodging				Residential	500 ft.
Commercial retail and service					
Corporate guest house					
Craft alcohol production establishment					
Drive-in facility	Residential	0.4			
Heavy retail and service					
Light automobile service					
Mixed use					
Restaurants				Residential	500'
Office					
Shopping center					
Vehicular sales, rental and service					
Recreation and Amusement					
Campground	All	0.6			
Recreation, high intensity	All	0.2			
Recreation, low intensity	All	0.1			
Resort	All	0.6			
Industrial Uses					
Compost operations					
Extraction	All	0.8 (150 ft.)	8 ft. berm	Residential	500 ft./100 ft.
Heavy industry					
Light industry					
Recycling or storage	All exterior storage	0.3	8 ft. fence or 4 ft berm		
Utilities, minor					
Utilities, major	All exterior storage of heavy equipment and materials	0.3	4 ft. berm		
Utilities, maintenance facilities					
Other Uses					
Airports				Residential	500 ft.

				and schools	
Commercial communications towers					
Exterior lighting for outdoor recreational uses					
Park and ride facility	Residential	0.3		Residential	
Parking structures					
<b>Temporary Uses</b>					
Temporary office, security, storage or classroom modulars or trailers				Residential	50 ft.
Concrete/asphalt batch plant					
Contractor's office					
Model homes/sales office					
Commercial temporary outdoor sales					
Public interest and special events					
Temporary miscellaneous sales					

*(Amended September 22, 1998 by Ordinance 98-062 and Ordinance 98-080; amended December 14, 1999 by Ordinance 99-075; amended May 9, 2000 by Ordinance 99-142; amended October 24, 2000 by Ordinance 00-065; amended March 27, 2001 by Ordinance 00-138; amended March 12, 2002 by Ordinance 01-112; amended December 11, 2007 by Ordinance 07-124; amended January 18, 2011 by Ordinance 10-113; amended November 22, 2011 by Ord. 11-042; amended July 28, 2015 by Ordinance 15-053; amended May 8, 2018 by Ordinance 17-108)*

TABLE 40.03.210 LIMITED AND SPECIAL USE STANDARDS							
Part B - Locational or Dimensional Standards							
Part C - Additional Standards							
Land Use	Minimum				Maximum		Other Additional Standards
	Spacing	Site Area	Road Access	Open Space	Lot Area	Height	
Agricultural							
Agriculture							
Clearing							Section <a href="#">40.03.301</a>
Farmstead							
Farm market							Section <a href="#">40.03.328</a>
Commercial stables							Section <a href="#">40.03.302</a>
Residential							
Single-family, detached							
Open space subdivision, Option 1							
Open space subdivision, Option 2							
Single-family, attached							
Open space planned							
Apartments							Section <a href="#">40.03.303</a>
Apartment conversions							Section <a href="#">40.03.304</a>
Commercial apartments							Section <a href="#">40.03.305</a>
Hamlet							Division <a href="#">40.25.100</a>
Village							Division <a href="#">40.25.100</a>
Group home							

Manufactured home park	2,640 ft.	8 ac.				35 ft.	Section <a href="#">40.03.306</a>
Small single-family							
<b>Home Uses</b>							
Day care, family/large family							
Home occupation							
Home business							Only allowed in farmsteads, hamlets & villages (Article 25 design standards will apply in hamlets & villages)
Cottage industry							Only allowed in farmsteads, hamlets & villages (Article 25 design standards will apply in hamlets & villages)
<b>Institutional</b>							
Assembly and worship							Section <a href="#">40.03.307</a>
Schools							Section <a href="#">40.03.307</a>
Colleges							---
Institutional, regional							Section <a href="#">40.03.308</a>
Institutional, neighborhood							Section <a href="#">40.03.309</a>
Institutional, residential (Type I)		10,000 sf or min. zoning dist. area for single-family du., whichever is greater					
Institutional, residential (Type II)		5 acs.	Collector				
Protective care		1 ac.					Section <a href="#">40.03.310</a>
Public service							Section <a href="#">40.03.311</a>
Hospitals		25 ac.					
<b>Commercial</b>							
Adult uses							Section <a href="#">40.03.313</a>
Agricultural support services							Section <a href="#">40.03.314</a>
Bed and breakfast		15,000 sq.ft.					Section <a href="#">40.03.315</a>
Commercial lodging							Max. 10% of GFA within the park or development in OR and BP District
Commercial retail and service							Division 40.25.200 for TN Districts. Max. 10% of GFA within the park or development and maximum of 10% within any one parcel in OR, BP and I districts
Corporate guest house		5 ac.					
Craft alcohol production establishment							Section <a href="#">40.03.318</a> , Section <a href="#">40.03.338</a>
Drive-in facility							Section <a href="#">40.03.316</a>
Heavy retail and service							
Light automobile service							Section <a href="#">40.03.317</a>

Mixed use							Section <a href="#">40.03.318</a>
Restaurants							Division <a href="#">40.25.200</a> for TN Districts. Max. 10% of GFA within the park or development and a maximum of 10% within any parcel in OR, BP and I districts
Office			In the TN - collector or arterial				In the TN, approved with site plan and design guidelines, see Division <a href="#">40.25.200</a> . In the HI, see Section <a href="#">40.03.321</a> for office use limitations
Shopping center							
Vehicular sales, rental and service							
<b>Recreation and Amusement</b>							
Campground							Maximum gross density of three (3) camp sites per acre
Recreation, high intensity							In the EX Zoning District, see Section <a href="#">40.03.324</a> .
Recreation, low intensity		2 ac.					
Resort		10 acres					Section <a href="#">40.03.322</a>
<b>Industrial Uses</b>							
Compost operations							Section <a href="#">40.03.336</a>
Extraction		25 ac.					Section <a href="#">40.03.324</a> * 100' for recreation, high intensity uses
Heavy industry							
Light industry							
Recycling or storage							The use is a limited use in the OR and BP zoning district only where there is no exterior storage, and all material is stored inside buildings with impervious floors.
Utilities, minor							
Utilities, major							
Utilities, maintenance facilities							
<b>Other Uses</b>							
Airports		300 ac.					Sections <a href="#">40.03.325</a> and <a href="#">40.03.432</a>
Commercial communications towers							Section <a href="#">40.03.326</a>
Exterior lighting for outdoor recreational uses							Sections <a href="#">40.31.430</a> , <a href="#">40.31.431</a> , and <a href="#">40.31.432</a>
Park and ride facility							
Parking structures							Sections <a href="#">40.03.528</a> , <a href="#">40.04.320</a> , and <a href="#">40.25.137</a>
<b>Temporary Uses</b>							
Temporary office, security, storage or classroom modulares or trailers							3 year nonrenewable permit, except that permits for temporary classrooms may be renewed by the Department. Shall provide required bufferyard for the principal use at adjacent lot line(s). Public schools

## Unified Development Ordinance

							shall show only the 50' separation on a site plan.
Concrete/asphalt batch plant							Section <a href="#">40.03.327</a>
Contractor's office							
Model homes/sales office							Section <a href="#">40.03.335</a>
Commercial temporary outdoor sales							Section <a href="#">40.03.329</a>
Public interest and special events							Section <a href="#">40.03.330</a>
Temporary miscellaneous sales							Section <a href="#">40.03.331</a>

*(Amended September 22, 1998 by Ordinance 98-062 and Ordinance 98-080; amended December 14, 1999 by Ordinance 99-075; amended May 9, 2000 by Ordinance 99-142; amended October 24, 2000 by Ordinance 00-065; amended March 27, 2001 by Ordinance 00-138; amended March 12, 2002 by Ordinance 01-112; amended October 25, 2005 by Ordinance 05-087; amended February 28, 2006 by Ordinance 05-130; amended September 25, 2007 by Ordinance 07-089; amended December 11, 2007 by Ordinance 07-124; amended November 25, 2008 by Ordinance 08-096; amended January 18, 2011 by Ordinance 10-113; amended November 22, 2011 by Ord. 11-042; amended July 28, 2015 by Ordinance 15-053; amended May 8, 2018 by Ordinance 17-108)*

# Exhibit E





OVER 100 YEARS OF SUPERIOR SERVICE

Artesian Water Company ▲ Artesian Wastewater Management ▲ Artesian Utility Development  
Artesian Water Pennsylvania ▲ Artesian Water Maryland ▲ Artesian Wastewater Maryland

July 17, 2019

**RE: Artesian Is Committed To Protect Your Water Supply - Join Us!  
Stop the Minquadale Landfill Expansion**

Dear Valued Customer:

Since 1905, Artesian has always been committed to delivering high quality water and superior customer service to communities, large and small, across Delaware. As part of that commitment, we work every day to safeguard the environment and our most vital natural resource - clean water.

**The water quality of the Potomac Aquifer, which is the source of drinking water to tens of thousands of families and businesses, is under threat.** There are plans to extend the life of the Delaware Recyclable Products Incorporated (DRPI) landfill in Minquadale. This landfill, which contains industrial and construction wastes, is located over the Potomac Aquifer and has the potential for contaminants in the landfill to find their way into this critical water resource. This represents a serious environmental and public health concern.

Artesian opposes the landfill expansion. DRPI's plans to raise the landfill by up to 60 feet (the equivalent of a 6 story building) over the existing landfill by disposing additional industrial waste, much of which is from out-of-state. Experts agree that this expansion would increase the potential for the landfill to adversely impact groundwater quality.

**Here's How You Can Help**

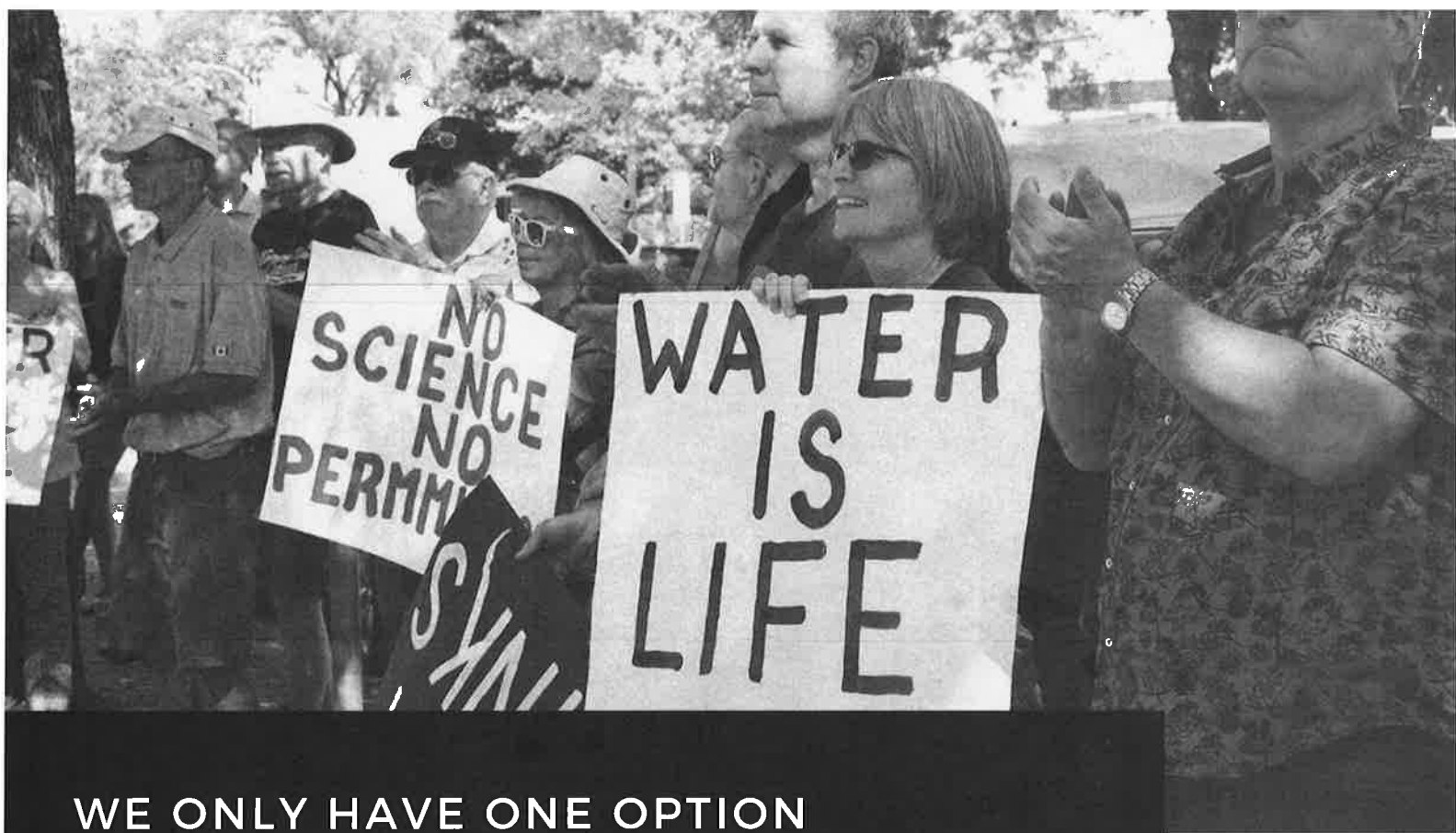
Tell the Delaware Department of Natural Resources and Environmental Control (DNREC) to deny DRPI's application for the landfill's expansion. Join Artesian, New Castle County Executive Matthew Meyer, Representative Franklin Cooke, New Castle County Councilpersons Jea Street, John Cartier, and Dee Durham, the Delaware Sierra Club, Indivisible Highlands and Beyond, Delaware United, Delaware League of Women Voters, Zero Waste First State, and others in halting DRPI's expansion plans and protecting this vital source of drinking water supply.

- **Join us on Saturday, July 27<sup>th</sup> from 9-11 a.m. for a Rally at 3601 North DuPont Highway, New Castle, DE 19720 to make sure DNREC hears our voices clearly: Deny the Landfill Expansion. (See enclosed flyer.)**
- Email DNREC, your County Councilperson, State Representative, State Senator and Governor John Carney. Let them know this landfill expansion plan threatens your drinking water by contacting them at <https://tinyurl.com/y3ojwtjr>.

We deeply appreciate the privilege of serving you and will continue to do everything we can to provide you with a safe and reliable water supply.

Sincerely,

Dian C. Taylor  
Chief Executive Officer



**WE ONLY HAVE ONE OPTION**

**WE MUST STAND UP FOR EACH OTHER  
JULY 27TH 9:00AM - 11:00AM**

# **PROTECT OUR WATER**

**PROTEST AND PRESS CONFERENCE**

**LOCATED AT 3601 N DUPONT HWY,  
NEW CASTLE, DE 19720**

**We will assemble in front of the DRPI landfill to  
tell Waste Management that they will not  
poison our water for their own profit.**

## **PARTNERS:**



**SIERRA  
CLUB**



**DE♀4  
Inclusion**

# Exhibit F

## OPINION

# Meyer: Waste Management's plan to raise Minquadale landfill is rubbish (opinion)

Matt Meyer Published 6:01 a.m. ET July 22, 2019

*Matt Meyer is the New Castle County executive.*

There is an environmental injustice simmering along Route 13, just two miles outside Wilmington, beside the New Castle County Public Safety Building. The owners of the DRPI Waste Management landfill have applied to the state to increase the height of their construction waste dumping site from 130 feet to 190 feet.

If approved, this nearly 20-story pile of construction waste will leave lasting public safety, environmental and quality of life repercussions for decades.

My most important commitment as your New Castle County Executive is to ensure that families of our county have safe and healthy communities to live, work and play. The proposal to increase the size of this regional landfill directly threatens that commitment.

That is why I have joined with a broad coalition of community leaders, neighborhood advocates, scientists, businesspersons, other elected officials and one of our state's leading water providers to act against the proposal.

## MORE IN OPINION:

**Constitutional questions:** [Can a politician block you on social media? Well, that depends. \(/story/opinion/contributors/2019/07/15/can-politician-block-you-social-media-depends-opinion/1732902001/\)](/story/opinion/contributors/2019/07/15/can-politician-block-you-social-media-depends-opinion/1732902001/)

**Desegregation debate:** [Biden wasn't wrong about busing \(/story/opinion/contributors/2019/07/11/biden-wasnt-wrong-busing-opinion/1695676001/\)](/story/opinion/contributors/2019/07/11/biden-wasnt-wrong-busing-opinion/1695676001/)

**Military issues:** [While servicemembers fight for our country, their families go hungry \(/story/opinion/contributors/2019/07/16/while-soldiers-fight-our-country-their-families-go-hungry/1737826001/\)](/story/opinion/contributors/2019/07/16/while-soldiers-fight-our-country-their-families-go-hungry/1737826001/)

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Every community needs to eliminate its waste. We cannot expect other communities to take on the burden of our trash.

According to the owner of the landfill, more than half of the waste is imported from outside of Delaware. We have no obligation to import and manage everyone else's waste. And we certainly have no obligation to do so in the middle of a large working-class neighborhood, near our state's largest city.

Furthermore, it is vitally important that we provide safe and healthy working environments for our first responders. More than 700 New Castle County Police Officers, Paramedics, Emergency Communications and Emergency Management workers go the extra mile every day to keep us safe. We must do everything we can to keep them safe.

Their headquarters is literally beside this mountain of trash. Should the landfill be raised to the height of a 20-story building, more trash, more debris and more odor would waft into the area where these first responders work each day.

Raising the height of the landfill is asking the residents of Minquadales and surrounding communities to shoulder an unfair burden, as well as those who come from miles around to use the beautiful Markell Trail, which sits just west of the landfill site. Today, the debris atop the landfill dwarfs the trail and is left uncovered for long periods of time, in conflict with current permit requirements.



**New Castle County Executive Matt Meyer** (Photo: Submitted)

The county and the state are collaborating and investing in community revitalization in these communities through multimillion-dollar public investments like the Markell Trail and the Route 9 Library and Innovation Center. Amidst so many steps forward, increasing the landfill height would threaten the quality of life for the thousands of residents and be a giant leap backward.

Finally, increasing the landfill capacity is a threat to our water supply. The landfill sits atop the Upper Potomac Aquifer, one of Artesian Water's largest aquifers in Delaware, serving hundreds of thousands of residents of New Castle County.

Artesian's leading water scientists have testified that increasing the height of the landfill will increase contaminants, potentially polluting drinking water for thousands of Delawareans. That is a risk none of us should be willing to take.

It is imperative that a thorough analysis be conducted to understand the potential for toxic contamination prior to any consideration of increased landfill capacity.

I have been heartened by the passion of so many of you to stop this environmental injustice. In recent days, I have received more emails, phone calls and text messages against raising the elevation of the landfill than I have on any other issue since I came into office in 2017.

I am in lockstep agreement with my constituents.

Right now, this critical decision lies with Delaware's Department of Natural Resources and Environmental Control. They will decide if the DRPI Waste Management landfill will receive a permit to expand.

In addition, New Castle County Councilman Jea Street has introduced an ordinance that I support to regulate solid waste landfills within the New Castle County Code, including a height restriction of 140 feet.

Now is your chance to be heard and to support your fellow Delawareans. Call your County Council member and express your support for this ordinance. Call your state legislators and tell them you stand with your neighbors in opposition to this increased height.

Enter your address in Parcel Search to determine your County and State elected officials to contact.

Lastly, join me at 9 am on Saturday, July 27th at the Public Safety Building at 3601 N. Du Pont Highway in New Castle to have our voices heard for our fellow Delawareans, for our public safety officers and for clean water.

I look forward to continuing to fight for the future health and safety of our community.

Read or Share this story: <https://www.delawareonline.com/story/opinion/contributors/2019/07/22/meyer-plan-raise-minquadales-landfill-rubbish-opi>

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# Exhibit G

***Via Overnight Delivery***

July 22, 2019

Mr. Jeff Shanks, P.G.  
Waste Management  
1000 New Ford Mill Road  
Morrisville, PA 19067

**RE: DRPI Landfill: Proposed Vertical Expansion Permit Application  
Artesian Water Company Written Public Comment Review**

Dear Mr. Shanks:

We have reviewed the June 28, 2019 written public comments submitted by Artesian Water Company Inc. (Artesian). As submitted, the comment package consists of four main Parts. Our review focused primarily on Part II of the document as comments presented in this part were specifically related to the Hydrogeologic Assessment Summary prepared by Blazosky Associates, Inc (BAI) dated October 2004, and which was submitted as part of the Cell 6 Expansion Permit Application by Geosyntec.

The written comments presented by the consultant for Artesian in Part II present five general issues, with each general issue having additional specific technical comments and or summary statements of opinion by the reviewer. Many of the comments relate to questioning how and why historic site specific geologic and hydrogeologic data are not applicable to the current proposed vertical expansion application. In addition, unsubstantiated opinions of the reviewer are presented as to why the application does not properly address various requirements of the Delaware Regulations Governing Solid Waste (DRGSW). Several of the comments and statements are baseless and to some extent nonfactual, while others could have been resolved by a more thorough review of the application and site-specific data.

Per many of the comments, the reviewer has a significant misunderstanding of the proposed vertical expansion at DRPI and that it simply does not include the construction of any new disposal cells. As DNREC is aware, the construction certification for the remaining permitted disposal cell at DRPI has been submitted for review and approval. The vertical expansion application simply proposes to add additional waste to these same disposal cells vertically with no horizontal or lateral additions to any disposal area. With no separate or additional disposal cells planned as part of the vertical expansion, the geologic and hydrogeologic data obtained from multiple previous investigations conducted at DRPI as part of previous landfill permitting activities are directly applicable and relevant to the proposed new vertical expansion. Claiming that historic site-specific



data is not applicable for use in the new application is a complete misstatement of fact. If this statement had any validity, which it does not, then the reviewer would have to recognize that their reliance on very generalized regional subsurface data that dates back more than 30 years, as presented in opposition to the application, would also not be valid.

Because the landfill is currently permitted and has had multiple subsurface investigations conducted in the past to obtain and maintain the solid waste permit, the current application for vertical expansion simply included what was deemed to be the most relevant data from previous investigations. For the most part, this was presented in the form of the 2004 Hydrogeologic Assessment Summary, prepared by BAI, which provides a sitewide conceptual hydrogeologic model that is based in part on data from the DRPI Cell 6 permitting process and from previous subsurface investigations conducted at both DRPI and the adjacent former Petrillo Brothers Dry Waste Landfill. In addition to the historic data, up-to-date groundwater quality information was also presented in the application. Therefore, the necessary information needed to meet the requirements of the DRGSW and for DNREC professionals to conduct a thorough evaluation has been submitted.

What is critical to understand from the above is that the entire disposal area at DRPI is already permitted and is already built out to its maximum lateral extent. Based on this, no additional subsurface investigation is necessary as there is simply no additional lateral areas of the landfill property to investigate. DRPI also has an approved groundwater monitoring program for the entire facility and is required by permit to sample and analyze groundwater for the suite of parameters that are specified in its solid waste permit.

Review and responses to select specific comments submitted by Artesian are present below.

#### Artesian Comment Number 1

This first general comment relates to reliance on 15-year old site-specific geologic and hydrogeologic data for the proposed vertical expansion application. Additionally, the comments state that previous data does not present what is required by the DRGSW and that the data does not reflect current conditions at the site.

These comments are baseless, as the entire disposal area of the DRPI landfill is already permitted and has been fully constructed. The subsurface geology has been characterized through previous investigations and it has certainly not changed since the completion of those investigations. The reviewer's statements that no additional borings were conducted for this application, that the 2004 report only included three new wells, and that the 2004 report is not appropriate to be used are simply misleading and inaccurate. As presented above, the 2004 report presents a sitewide Conceptual Hydrogeologic Model of the entire DRPI property. The model was developed using data from multiple investigations conducted across both the DRPI and Petrillo properties that

included information from not less than ten new borings specifically focused on characterizing the subsurface beneath Cell 6, as well as from multiple other existing borings, wells and piezometers.

In summary, the hydrogeologic assessment summary from 2004 that was included as part of the current application was originally prepared in connection with the Cell 6 expansion application. It presents a site-wide summary of the hydrostratigraphic conditions. As stated above, the proposed vertical expansion does not include the development or construction of any new disposal cells outside of the existing disposal area. Based on existing regulations, such facts allow the use of the existing data as part of permitting for the vertical expansion. In addition to the historic data, updated groundwater quality and elevation data collected from the approved monitoring system through 2017 were also included in the application. These combined historic and updated groundwater quality data serve to provide the information required by the DRGSW.

#### Artesian Comment Number 2

This comment pertains to aquifer classification and presents a summary of regional geologic literature on the Potomac Aquifer. In addition, it presents in some detail, specific comments on information and data presented in the 2004 hydrogeologic assessment report for DRPI. In general, Artesian claims that DRPI overlies an important Aquifer (Potomac Aquifer), however the reviewer presents generalized regional geologic mapping figures and cross sections in an attempt to show a direct hydraulic connection between DRPI and Artesian water supply well fields. A more detailed review of this regional data and other regional geologic information in conjunction with DRPI site-specific hydrogeologic information, demonstrates that DRPI is located on the opposite side of a groundwater divide from Artesian's well fields.

With regard to aquifer classification, while the DRPI landfill does overlay the Potomac Formation, site specific subsurface data demonstrates that a significant clay aquitard overlays the upper most aquifer of the Potomac Formation beneath the landfill and that the generalized cross sections presented by the reviewer do not accurately depict the actual subsurface conditions beneath DRPI. As described by Woodruff<sup>1</sup> "The Potomac Formation is fluvial in origin and is composed predominantly of clays and silts with some interbedded sands. Furthermore, per Woodruff, these sands in the DRPI area "are thin and irregular in extent and thickness".

Furthermore, it should be noted that Artesian's assertion regarding DRPI's position that no valuable aquifer will be impacted is taken out of context, in that the Siting Requirements for industrial waste landfills require that "No new cell shall be located in areas where valuable aquifers would be threatened by contaminant releases, unless viable alternatives have been dismissed and stringent design measures have been incorporated to minimize the possibility and magnitude of releases". Please note that: 1) no new cells are being developed within the vertical expansion; 2)

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<sup>1</sup> Woodruff, K.D., Delaware Geologic Survey, Geohydrology of the Wilmington Area, Delaware, 1981; Hydrologic Map Series No. 3, Sheet 1 Basic Geology

the vertical expansion will be developed above existing refuse and; 3) the proposed vertical expansion includes significant engineering design measures and redundant safe guards to minimize the potential for leachate releases, which complies with the Siting Requirements.

Additionally, although described as regional, the true nature of the Potomac Aquifer in the Minquadales area is such that it consists of separate upper and lower sand units that are separated vertically by clay aquitards. As described by Woodruff<sup>2</sup>, all sand units in this area are not continuous laterally. Furthermore, based on groundwater elevation data compiled by the Delaware Geologic Survey<sup>3</sup>, DRPI is located in a different shallow groundwater flow system that is separated from the Artesian well fields by a groundwater divide in the shallow groundwater flow system. This groundwater divide is generally oriented northeast to southwest with the shallow flow zone on the north side of the groundwater divide flowing toward the Christina River, while the shallow zone on the south side of the groundwater divide flows toward the Delaware River. The clay aquitards and groundwater divide both serve to isolate DRPI from the Artesian water supply wells completed in both the Columbia and Potomac Formations.

Our letter to Waste Management dated June 18, 2019 presenting responses to the initial public comments made at the May 29, 2019 public meeting by Artesian, addressed this issue in some detail and presented figures showing how DRPI is hydraulically separated from the Artesian well fields.

Another specific comment presented under this general item relates to due diligence and culminates with Artesian's misconception that background groundwater quality has not been characterized in accordance with DRGSW (4.2.1.5.3) and that only three wells were installed in 2004 to provide background characterization for the Cell 6 expansion evaluation.

This assumption that background groundwater quality was only characterized by three wells is entirely inaccurate as a total of ten wells were installed between 1999 and 2003 as part of the Cell 6 Expansion or for closure evaluation of the Petrillo Dry Waste Landfill and adjacent industrial properties. In addition, another nine previously existing subsurface installations on the southern side DRPI Cell 1 and Cell 5 were utilized for background characterization. Dozens of other test borings, wells and piezometers across the DRPI property were also relied on to develop the site-specific conceptual hydrogeologic model presented for the Cell 6 Expansion.

Other questions regarding interpretation of geologic logs and cross section data are also presented by Artesian. Some questions can be resolved with a more detailed review of the information, while other identified inconsistencies are minor and do not change the site-specific Conceptual Hydrogeologic Model.

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<sup>2</sup> Woodruff, D.K., Delaware Geologic Survey, Geohydrology of the Wilmington Area, Delaware, 1981; Hydrologic Map Series No. 3, Sheet 3, Structural Geology

<sup>3</sup> Groundwater Elevation Data: Digital Water-Table Data for New Castle County, Delaware (Digital Data Product No. 05-04) <https://www.dgs.udel.edu/datasets/digital-water-table-data-new-castle-county-delaware-digital-data-product-n0-05-04>

### Artesian Comment Number 3

This entire comment is a dissertation on two historic landfills that operated in the 1960-70s and that have no association with the DRPI landfill. Reference to these landfills is irrelevant to the proposed vertical expansion at DRPI. Mere speculation and comparison of DRPI to unrelated landfill sites is not technically supported by any data and is inappropriate.

The final paragraph in this item is a series of disjointed comments and refers to data and engineering drawings from the 1994 report prepared by JCA Associates, Inc. (JCA). Based on their assessment of this JCA report, the reviewer attempts to sensationalize a point by presenting a completely misleading statement as some form of fact. The reviewer states that the JCA report identifies "a layer of up to 30 feet thick of concrete and rubble/debris...." The JCA report contains no such definitive statement or determination and the engineering cross sections identify only mixed fill consisting of sand, gravel concrete, wood and debris. This is discussed further in the next response.

In addition, the disjointed nature of this written comment appears to indicate that the reviewer may not be aware that the JCA report does not pertain to Disposal Cells 1 and 2 of the DRPI landfill. The JCA report was actually studying two different Cells also designated as 1 and 2, but which were for a proposed landfill that was never developed next to the DRPI Cells 1 and 2. The area where the proposed Cells 1 and 2, as referenced in the JCA Report was later developed by DRPI as Cell 5. Closer review of the documents and site specific DRPI information would serve to satisfy questions presented by the reviewer at the end of this item.

### Artesian Comment Number 4

This comment pertains to the complexity of the site geology, monitoring well location and construction, groundwater elevation analysis and five-foot groundwater separation at DRPI. The same 1994 report by JCA is used as a reference in this item, as well as the 2004 Disposal Cell 6 Hydrogeologic Assessment Summary.

Again, the reviewer presents misstatements regarding findings presented by JCA, and provides incomplete quotes from the document to support an unsubstantiated concern. The reviewer attempts to emphasize that JCA encountered groundwater in zones made up of sand/fill/debris at varying depths ranging from 12 to 25 feet in their borings. The reviewer also quotes a portion of section 7.3 of the JCA report to demonstrate that there are interconnected layers of sand that provide conduits for subsurface water to travel.

First, the reviewer has not included the very next sentence from Section 7.3 of the JCA report that states "Those conduits (also known as aquifers) were inconsistent throughout the site." This

sentence demonstrates that these shallow sands themselves are not continuous across the DRPI property

Second, and more importantly, the shallow sands and other fill materials encountered in 1994 by JCA from ground surface to depths of 25 feet are no longer present as they have been removed as part of construction of disposal Cell 5 and therefore, they present no concern.

Comments pertaining to the 2004 Hydrogeologic Assessment are numerous and focus on re-evaluating the data to identify inconsistencies at a micro level. Addressing each individual item of concern in detail is beyond the scope of this review. However, general responses to some of the items are presented below.

- Complexity of Site Geology
  - The hydrostratigraphic units present beneath the DRPI property have been well documented through numerous subsurface investigations that have been conducted to provide a detailed characterization of the site.
- Monitoring Well Location and Construction
  - All permanent monitoring wells at DRPI are approved by DNREC and were installed to monitor specific zones of saturation as identified by the numerous site-specific subsurface characterization investigations. DNREC professionals at the time were intimately involved with selecting monitoring well locations and the desired zones to be monitored.
  - The early detection groundwater monitoring system is designed to monitor the shallow saturated water table zone that occurs in the Upper Potomac Formation and overlying remnant fill/sediments and the deeper flow zone that occurs as the upper portion of the Lower Potomac Formation.
  - The permanent monitoring wells were installed, as required, by well drillers licensed in the State of Delaware. Well screen lengths spanning and monitoring entire saturated intervals (20-30 feet) are industry standard and common practice for early detection monitoring at solid waste disposal facilities.
  - Test borings and wells not used for permanent monitoring purposes were properly decommissioned.
- Groundwater Elevation Analysis
  - The comment regarding the groundwater flow in the shallow zone and how the groundwater control system beneath Cells 4 and 5 of the DRPI landfill impart control on the shallow system is addressed by daily operations data associated with the groundwater control system, which is operated continuously and continuously monitors depth to water in the main dewatering sumps using transducers.
- Five-Foot Groundwater Separation
  - Cells 4 and 5 at DRPI are both constructed with a 5-foot thick structural fill component above the top of the groundwater control system and beneath the overlying liner system. The continuous operation of the dewatering system and the presence of the 5-foot thick structural fill component serve to ensure the required

5-foot separation is maintained. Disposal Cell 6 was constructed on grade with limited excavation and above the water table.

#### Artesian Comment Number 5

This final item questions the aquifer testing and historic groundwater quality data. Hydraulic testing of various water-bearing units beneath DRPI were conducted as part of each historic site investigation. These consisted of in-situ testing, using slug tests, single well pumping tests, multiple well pumping tests and by laboratory analyses of soil materials. The testing conducted in 2003-04 for the Cell 6 application were limited to slug testing and single well drawdown tests, which are acceptable methods for the permitting of a solid waste facility.

DRPI has an approved groundwater monitoring program for the entire facility and is required by permit to sample and analyze groundwater for the suite of parameters that are specified in its solid waste permit.

The groundwater quality data for the DRPI landfill is databased back to 1995 and this data through 2017 was included in the application package for the proposed vertical expansion. This groundwater quality data exhibits consistent concentrations for the monitored parameters over time which demonstrates that there is no ongoing release or impact imparted by the landfill. In addition, per the DNREC Secretary's Order No. 2015-WHS-0048 issued as part of the 2015 permit renewal for DRPI; DNREC concluded "that there is no nearby local source of drinking water that could be contaminated," and that "Department review of groundwater testing at the facility does not show any groundwater contamination." Furthermore, the Department stated that "Groundwater samples are collected from 8 shallow wells and 6 deep monitoring wells for lab analysis. In general, analytical data has remained consistent over the long term and detected analyte concentrations do not appear to pose a threat to human health or the environment... The permit includes all appropriate safeguards to reduce the risk of any contamination."

#### Summary

Review of the comments presented by Artesian indicate that the reviewers did not conduct a complete and thorough review of the application package as several of their comments are addressed in the application. The primary misunderstanding by the reviewers is that the application is solely for a vertical expansion and that the entire disposal area at DRPI is already constructed such that no new disposal cell is being requested as part of the application. This fact is why the historic geologic data presented in the application is appropriate and directly applicable to the vertical expansion. Updated groundwater quality data has also been included in the application package and demonstrates consistent water quality over time with no indication of facility related impact, which has been confirmed by DNREC. Additional comments by Artesian attempting to compare DRPI to other historic landfills and groundwater degradation elsewhere in Delaware are unfounded. Use and reference to regional geologic and hydrogeologic data from the

Delaware Geologic Survey has also been presented in a misleading manner. Design of the DRPI landfill is in accord with the DRGSW and the application as submitted satisfies these regulations.

As previously indicated, extensive subsurface characterization work has been conducted at DRPI Landfill as part of the original landfill permitting for lateral expansions. These data and the resultant site-specific conceptual hydrogeologic model have been extensively reviewed, commented on and approved by DNREC. The subsurface investigations conducted at DRPI provide an accurate depiction of the geology and hydrogeology and confirm that DRPI is hydraulically isolated from Artesian's well fields located to the south.

If you have any questions regarding this summery please feel free to contact me.

Sincerely,

Taylor GeoServices

A handwritten signature in black ink, appearing to read "A. J. Sokol".

Andrew J. Sokol, P.G.  
Vice President/Senior Geologist

# Exhibit H



23 July 2019

**VIA E-MAIL**

Mr. Barry T. Sutch  
Senior Engineering Manager  
Greater Mid-Atlantic Market Area  
Waste Management  
1000 New Ford Mill Road  
Morrisville, Pennsylvania 19067

**Subject: Response to Artesian Water Company, Inc. June 28, 2019 Submittal to Lisa A. Vest, Hearing Officer, Regarding Permit Modification Application for Vertical Expansion, Delaware Recyclable Products, Inc. Landfill, New Castle, New Castle County, Delaware**

Dear Barry:

Geosyntec Consultants (Geosyntec) is pleased to present this evaluation of, and response to, comments submitted relative to the proposed vertical expansion of the Delaware Recyclable Products, Inc. (DRPI) Landfill in New Castle, Delaware. Specifically, Geosyntec has addressed comments dated 28 June 2019 submitted by Artesian Water Company (Artesian) to Lisa A. Vest, Hearing Officer, regarding the DRPI vertical expansion<sup>1</sup>. The remainder of this letter provides a summary of site conditions and then summarizes and refutes Artesian's unsubstantiated and speculative claims. Greater detail on site conditions are provided in the permit application and in our 18 June 2019 letter regarding Artesian's testimony at the public hearing.

**Current DRPI Landfill Configuration**

The DRPI Landfill operates as an industrial waste landfill, which primarily accepts construction and demolition debris (CDD), that has been permitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) since 1983. There have been several landfill expansions supported by subsurface investigations, including soil borings, installation of piezometers and groundwater monitoring wells, and hydrogeologic cross sections, as part of the permit modification applications. The information gained through these investigations has contributed to the development of the current hydrogeologic model for the site. The DRPI Landfill is operated with a leachate collection system, providing collection for both lined and unlined portions of the landfill. For the lined cells, leachate is collected in designed sumps (low point in

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<sup>1</sup>Excerpted from DNREC website titled, Public Hearing: Delaware Recyclable Products, Inc. (DRPI) Industrial Waste Landfill Permit, <https://dnrec.alpha.delaware.gov/events/391/public-hearing-delaware-recyclable-products-inc-drpi-industrial-waste-landfill-permit/>.

the cell floor grading) and then transmitted to the on-site pre-treatment system via a perimeter forcemain and, ultimately, to the New Castle County Sewer System, where it is further treated prior to discharge. For unlined portions of the facility, DRPI Landfill has two subsurface/lateral leachate collection toe drains, which also discharge to the leachate forcemain. Liquid that is collected in these toe drains is pumped into the leachate forcemain and is treated in the same manner as leachate collected from the lined cells. Further detail on the leachate and groundwater collection and transmission systems is presented in the Permit Modification Application for Vertical Expansion for the DRPI Landfill (DRPI permit application)<sup>2</sup>. The performance of these engineered containment systems in controlling potential leachate releases to groundwater is evaluated on a regular basis using data from a groundwater monitoring system. The proposed vertical expansion for the DRPI Landfill is over the existing footprint of Cells 1 through 6 but will not expand horizontally beyond previously-investigated and previously-permitted waste disposal cells.

### **Geologic Setting**

The DRPI Landfill is located on the Atlantic Coastal Plain Physiographic Province, near the Fall Line. Coastal Plain sediments increase in thickness, and dip, toward the southeast. Surficial sediments in the DRPI Landfill vicinity consist of the Columbia Formation sand and gravel. However, the Columbia Formation has been removed by pre-landfill sand and gravel mining operations over most of the landfill footprint except for a small area beneath the southern part of the landfill (see Attachment 1)<sup>3</sup>. The Potomac Formation underlies the Columbia Formation and is present beneath the landfill footprint. The Potomac Formation is divided into two zones: the Upper Potomac and the Lower Potomac, with clay aquitards and underlying confined sand aquifers in each. A clay aquitard of the Upper Potomac Formation is present between the bottom of the landfill and the upper sand zone of the Upper Potomac Formation (see Attachment 1).

### **Artesian's Unsubstantiated Claims Dated 28 June 2019**

Artesian's 28 June 2019 comments, submitted subsequent to the 29 May 2019 public hearing, do not indicate whether they were developed in consideration of DRPI's 18 June 2019 *Response to Selected Comments Presented at Public Hearing* on 29 May 2019. The sections below summarize and address some of Artesian's unsubstantiated and speculative claims that are inconsistent with the facts that are substantiated by actual site-specific soil boring information developed as part of previous permit applications for the area of the proposed vertical expansion.

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<sup>2</sup> Permit Modification Application for Vertical Expansion DRPI Industrial Landfill New Castle, Delaware, Prepared by: Geosyntec Consultants, July 2018.

<sup>3</sup> Blazosky Associates, Inc. Hydrogeologic Assessment Summary Narrative, DRPI Industrial Waste Landfill Proposed Disposal Cell 6 Expansion (October 13, 2004).

1. Artesian Claim: DRPI Landfill sits directly upon the Upper Potomac *aquifer* [emphasis added] from which Artesian draws its public drinking water supply. The lower cells of industrial waste that will be compressed are the oldest at the site, have no liner beneath them, and are in direct contact with the Upper Potomac aquifer.

To indicate that the landfill lies directly on top of the Upper Potomac aquifer is incorrect and misleading, because boring logs for the site show that the landfill lies above the Upper Potomac Formation *aquitard*. The 18 June 2019 Geosyntec response letter provides Delaware Geological Survey maps that support the position that the landfill is separated from the Upper Potomac aquifer in the subsurface by the Upper Potomac aquitard.

Geosyntec evaluated the potential for off-site migration of leachate to Artesian's public water supply wells and discussed the matter in a letter dated 18 June 2019 in response to Artesian's comments provided at the 29 May 2019 public hearing<sup>4</sup>. Artesian's well fields are located approximately one to two miles south of the landfill and east of the New Castle County Airport. Review of Delaware Department of Natural Resources Public Water Supply Source Assessment reports for Artesian's Collins Park<sup>5</sup>, Castle Hill<sup>6</sup>, and Jefferson Farm<sup>7</sup> well fields indicate that some of the public wells are screened either: (1) exclusively in the upper sand zone of the Upper Potomac Formation; (2) exclusively in the lower part of the Columbia Formation; or (3) in both the lower part of the Columbia Formation aquifer and the underlying upper sand zone of the Upper Potomac Formation. A groundwater monitoring system is in place around the landfill<sup>8</sup> and there is also a shallow groundwater collection system beneath the landfill that induces inward gradients in

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<sup>4</sup> Letter from Geosyntec Consultants, Inc. to Mr. Barry Sutch of Waste Management regarding Response to Selected Comments Presented at Public Hearing, Permit Modification Application for Vertical Expansion, Delaware Recyclable Products, Inc. Landfill, New Castle, New Castle County, Delaware, 18 June 2019.

<sup>5</sup> Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Source Water Assessment and Protection Program, Public Water Supply Source Water Assessment for Artesian Water Company (Collins Park), December 31, 2003. Table 1 shows one well, screened 100-125 feet below ground surface (bgs) in the Potomac Formation.

<sup>6</sup> Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Source Water Assessment and Protection Program, Public Water Supply Source Water Assessment for Artesian Water Company (Castle Hills), December 31, 2003. Table 1 shows Well 1 screened 50-73 feet bgs in Columbia Formation, Wells 2 and 3 screened 56-104 and 56-108 feet bgs, respectively, in both the Columbia Formation and Potomac Formation.

<sup>7</sup> Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Source Water Assessment and Protection Program, Public Water Supply Source Water Assessment for Artesian Water Company (Jefferson Farm), December 31, 2003. Table 1 shows Well 1A screened 96-140 feet bgs and Well 2 screened 127-137 feet bgs, both in the Potomac Formation.

<sup>8</sup> Waste Management, Updated Groundwater, Leachate, and Stormwater Monitoring and Reporting Program Plan, Cells 1, 2, 3, 4, 5, and 6, DRPI Industrial Waste Landfill, June 2009.

shallow groundwater toward the center of the landfill, thus inhibiting potential leachate migration away from the landfill footprint<sup>9</sup> (see Attachment 2).

Artesian is concerned about potential landfill leachate migration pathways through the Upper Potomac Formation 'upper sand zone' (a.k.a. 'upper aquifer') to their supply wells. Artesian inferred from the conceptual cross section they submitted at the public hearing that there would be direct recharge of potential leachate releases from the landfill into the subcrop of the upper sand zone of the Upper Potomac Formation. The stratigraphy presented on Artesian's schematic cross section, without any clay between the bottom of the landfill and the upper sand zone of the Upper Potomac Formation, is inconsistent with the site-specific soil boring information used to produce the subsurface stratigraphy shown in Attachment 1.

Furthermore, Delaware Geological Survey's cross section B-B' is drawn to scale using specific soil boring log information and passes through the landfill location. Cross Section B-B' shows that there is a clay aquitard separating the (previously quarried) Columbia Formation and the upper sand zone of the Upper Potomac Formation beneath the landfill and to the south of the landfill toward the public supply wells. Cross section B-B' goes through the site between borings Cd31-16 and Cd31-4 and shows that there is clay present above the Upper Potomac sand aquifer. Therefore, use of the schematic cross section taken from Sheet 4 of Woodruff and submitted by Artesian at the public hearing is misleading. The schematic itself is very generalized and was not intended by Woodruff to represent actual detailed subsurface conditions. It does not show the presence of the thick clay aquitard that has been defined on Woodruff's other more detailed cross sections to exist between the landfill and the upper sand zone. The boring logs for the landfill permit applications also show the presence of the clay aquitard between the landfill and the upper sand zone as depicted in Attachment 1<sup>10</sup>. The Delaware Geologic Survey cross sections show the Upper Potomac aquifer conceptually as a continuous sand layer over a distance of 4.5 miles based upon a very limited number of soil borings. Considering that the sand was deposited in a braided stream facies that typically has discontinuous sand lenses mixed with silt and clay, the connection of the sand over this distance based on so few borings is not highly credible. There are not enough data points to demonstrate continuity and substantiate that the Upper Potomac sand aquifer is mappable over extended distances in this region. In fact, the Discussion Notes on the Delaware Geological Survey maps substantiate this description indicating that the sands are not continuous in the vicinity of the landfill. Therefore, contrary to Artesian's incorrect assertions, the landfill does not lie directly upon the upper sand zone and there is not a direct connection from

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<sup>9</sup> Taylor Geoservices, DRPI 2017 Annual Report (February 28, 2018).

<sup>10</sup> Geologic Fence Diagram, DRPI Industrial Waste Landfill Cell 6 Expansion Area prepared by Blazosky Associates, Inc. (BAI Drawing NO. WMI-186E001; February 18, 2004).

beneath the DRPI Landfill to the upper sand zone of the Upper Potomac Formation and, therefore, no connection to the water supply wells.

The Columbia Formation has been removed beneath most of the landfill by previous sand and gravel quarry operations but there is a small area of remaining sand and gravel in the southern end of the DRPI Landfill. However, the hydraulic gradient in the shallow groundwater is to the north toward the Christina River, and away from the Artesian well fields location to the south. This natural gradient to the north is further enhanced by the groundwater collection system beneath the center of the landfill. Therefore, there is no migration pathway for DRPI leachate to the water supply wells screened in the Columbia Formation.

2. Artesian Claim: The application fails to provide any recent analyses that demonstrate current conditions at the site. The 2004 hydrogeologic report is insufficient to support the current application. The 2004/2005 assessments are stale and fail to account for other changed circumstances. DRPI provided stale and incomplete Hydrogeological and Environmental Assessments.

It should be noted that Artesian itself is relying on older 1980s vintage Delaware Geological Survey maps. Subsurface stratigraphy does not change through time unless excavated. Therefore, the existing boring logs, fence diagram, and 2004 Hydrogeologic Assessment are still applicable and useful. The vertical expansion does not consider new horizontal/lateral filling areas, so there was no need to complete additional soil borings because the subsurface stratigraphy was unchanged from the 2004 report. It is misleading to say the application fails to provide recent analyses that demonstrate conditions at the site because permit monitoring data for the entire facility were also considered in the permit application. In fact, Artesian states on page 3 of 21 in Part II that “.... DRPI presented more recent data....”

3. Artesian Claim: The direction of groundwater flow are based on problematic, old data. Problems with the location, number and type of monitoring wells and what they are being used to test for. Water quality analysis should be collected for the full suite of compounds.

Artesian did not cite any specific concerns about the location, number, and types of existing monitoring wells. The solid waste regulations do not require testing of monitoring wells for the full list of public drinking water parameters, particularly the *Unregulated Contaminant Monitoring Rule* list (see page 18 of 21 in part II of the Artesian submittal).

The groundwater collection systems induce an inward gradient toward the landfill, not toward the Artesian wellfields, no matter how the subsurface stratigraphy is classified.

4. Artesian Claim: DRPI's own data indicate a contaminant release from the landfill.

Detection of iron and manganese in the site groundwater is not indicative of a leachate release. These two metals have similar geochemical properties and are more mobile under reducing conditions (i.e., where the groundwater is not in contact with atmospheric oxygen). The interfingering of clay and sand lenses in the Upper Potomac effectively limits transport of atmospheric oxygen into the subsurface. Sediments deposited by terrestrial streams (e.g., the Potomac Formation) tend to have abundant iron and manganese oxides coating the sediment grains. When these sediments are buried and cut off from the atmospheric oxygen where they were initially deposited, these iron and manganese oxide coatings can begin to dissolve into the groundwater. These processes are well-documented in the Atlantic Coastal Plain. The United States Geological Survey (USGS) describes exactly these processes for the Delaware Coastal Plain<sup>11</sup> and they tabulate naturally-occurring iron concentrations up to 5 mg/L. Another USGS report<sup>12</sup> gives greater detail for the Potomac Formation water quality in Delaware and indicates the 75th percentile iron concentration is 1 mg/L and the 90th percentile is 100 mg/L. These naturally-occurring values exceed the secondary drinking water quality value of 0.3 mg/L.

5. Artesian Claim: The proposed modification would result in construction of what is functionally a new cell of industrial waste.

Delaware's Regulations Governing Solid Waste (DRGSW) define a Landfill Cell Boundary as "...an imaginary vertical surface located at the hydraulically downgradient limit of the cell...." Extending this definition to also apply to other boundaries of the landfill cells means that no additional cells are being built as the result of the vertical expansion. Therefore, the application is not required to include items that are only required when new landfill cells are being proposed.

6. Artesian Claim: The application does not present a clear picture of current conditions at the site or the projected impacts.

Artisan did not indicate what circumstances at the landfill have demonstrably changed since 2004. Historical boring logs used to perform hydrogeologic evaluations are as useful today as they were in 2004.

7. Artesian Claim: DRPI has not undertaken analysis of "stringent design measures" that could "minimize the possibility and magnitude of releases."

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<sup>11</sup> L.L. Knobel, F.H. Chappelle, and H. Meisler, 1998. Geochemistry of the Northern Atlantic Coastal Plain Aquifer System, USGS Professional Paper 1404-L.

<sup>12</sup> J.M. Denver, 1987, Delaware Ground Water Quality, USGS Open File Report 87-0718.

Design and operation of the landfill does include stringent measures and controls, as required by the regulations, to minimize the possibility of aquifer threat by contaminant release. These include the leachate collection system and several groundwater collection trenches.

8. **Artesian Claim: Similar site history and geologic setting to the Army Creek and Delaware Sand and Gravel Superfund Sites**

Comparisons to Army Creek Landfill and Delaware Sand and Gravel sites are irrelevant and have no other relevance to the technical support provided in the application to DNREC. Artesian and Groundwater Associates have speculated that there could be a water quality issue, and have not demonstrated lines of evidence that an impact has occurred, particularly with landfilled wastes that date back decades.

9. **Artesian Claim: Concern with the siting of the landfill in a former borrow pit.**

The historic sand and gravel mining do not result in a direct connection between the landfill and the Upper Potomac aquifer because it is overlain by an Upper Potomac aquitard. Groundwater Associates does not demonstrate or present any data to indicate the aquitard was removed, whereas the site boring logs show the aquitard to be present.

**Artesian Letter Part III**

The following are comments presented in Part III of Artesian's 28 June 2019 letter, which were provided by James F. Cloonan of Duffield Associates, LLC.

1. **Comment 1: Leachate Collection system:** Appendix VI-E "Leachate Management System Calculations" concludes that the existing or currently designed leachate collection system is adequate to handle the peak flow due to proposed vertical expansion. Application Drawings 8 and 9 detail the leachate collection system modifications and connection to the existing system required for the proposed Landfill expansion. No discussion or documentation is provided concerning the condition of the existing leachate collection system, which can be impacted by landfill settlement, leachate deposits, degradation, etc. A recent CCTV survey would be appropriate to document the vertical and horizontal alignment and hydraulic functionality of the existing system piping and to determine if additional improvements or maintenance of the leachate collection system is needed.

DRPI Landfill performs cleaning of the leachate and underdrain pipes at the facility on a regular basis. The most recent cleaning was performed in 2018 by Copperhead Custom, Inc. Environmental Services of Langhorne, Pennsylvania. Details of any significant cleaning and

maintenance of the leachate and underdrain systems at the facility are included in DRPI's annual reports, which are submitted to DNREC.

2. Comment 2: The Application notes that with the exception of a limited area of Cells 1, 2, and 3, the landfill is currently lined. Several appendices document the proposed new liner system materials and stability (relative to material strain, sliding and slope stability). Application drawing details indicate that the proposed new liner membrane will be welded to the existing liner. However, no information regarding design criteria, construction techniques and materials used for existing liner systems has been provided. To evaluate proposed tie-in to the proposed expansion system, this information should be appended to the application.

All liner construction, including the Cells 1-3 overlay and Cell 6, has been completed since submittal of the vertical expansion application. This work was performed in accordance with the engineering design, specifications, and quality assurance plan that were approved under DRPI's current operating permit.

3. Comment 3: The geotechnical report, prepared by JCA in August of 1994, focused on a 28 acre area at the northwest corner of the 146 acre landfill. One of the borings performed encountered a thin layer of soft compressible soils. This area has received fill for many years and is outside where the bulk of future landfilled material will be placed. This soils compressible soil layer was not observed in the remaining test borings logs included with the 1994 report.

The shear strength estimates included in the JCA report were based on just 2 triaxial tests. After reviewing the SPT, N data from the numerous test borings logs included in the report, it appears that the shear strength estimates were underestimated and conservative. The strength parameters established from the two shear strength test (inadequate for a landfill of this size) were carried through in Geosyntec subgrade stability analysis. Assuming the subsurface conditions observed in the JCA test borings are consistent across the site, we agree that it does not appear that the stability of the subgrade will be an issue. However, there will be settlement (thus our concerns with the continued function of the currently existing leachate system).



As noted, one thing that is lacking is the establishment of engineering parameters for the greater area of the landfill. There is too much reliance on, and extrapolation of, the JCA data, which evaluated less than 20% of the proposed landfill area. Since the landfill is mostly lined and existing, it is too late to obtain this information using conventional standards of care and practice. That being said, a careful review and possible additional investigation/analysis is warranted given a) the limited geotechnical information presented across most of the landfill; b) the significant additional landfill height increase being proposed; and c) the projected significant consolidation resulting from the proposed vertical increase.

The stratigraphy at the DRPI Landfill is based on soil boring information contained in multiple soil investigation reports including: (i) eight borings described in the *"Subsurface Investigation and Geotechnical Report"*, by James Anderson Associates, Inc., dated August 1994 performed in the Cell 5 area; (ii) six borings described in the *"Delaware Recyclable Products Landfill, Cell 4 Geotechnical Exploration"*, by Duffield Associates, dated October 1994; (iii) six borings described in the *"Hydrologic Assessment Report for Proposed Cell 4"* by Geosyntec [1994] which included soil borings around the Cells 1-3 area; and (iv) two soil borings described in the *"Proposed Cell 6 Expansion Hydrologic Assessment Summary"* by Blazosky [2004]. These four reports contained soil stratigraphic information for the entire landfill area (Cells 1-6). A review of the information listed above indicated that the soil stratigraphy was consistent throughout the DRPI Landfill property.

#### **Artesian Letter Part IV**

The following are comments presented in Part IV of Artesian's 28 June 2019 letter, which were provided by Jeffrey M. Bross and Christopher C. Whallon, both of Duffield Associates, LLC.

1. Comment 1: DRPI's Application is based upon an Environmental Assessment Report that fails to provide current information regarding air quality; water quality; stream flow; fish and wildlife; plants; threatened and endangered species; water uses; land uses; aesthetics; traffic; public health and safety; cultural, recreational, and natural areas; historic sites; social and economic factors; or soil quality.

No additional areas or cells are being added to the landfill footprint as part of this application and, therefore, no additional environmental impacts are anticipated as a result of the vertical expansion.

2. Comment 2: DRPI should be required to extend the planned low-permeability cover system to all waste-containing areas of the site that will not be affected by the proposed Vertical Expansion as a precondition of approval of the Application.

A low-permeability cover system has already been installed or is planned to be installed over the areas of the former Petrillo landfill that are outside of the lined waste disposal footprint. Following the completion of waste placement at DRPI Landfill, a low-permeability cover system will be placed over all of the lined waste disposal footprint.

3. Comment 3: DRPI should be required to conduct a comprehensive wetland evaluation prior to the Application being considered.

No additional areas or cells are being added to the landfill footprint as part of this application and, therefore, no wetland impacts are anticipated as a result of the vertical expansion.

4. Comment 4: DRPI should be required to conduct a comprehensive hydrogeologic evaluation prior to the Application being considered.

No additional areas or cells are being added to the landfill footprint as part of this application and, therefore, the hydrogeologic investigations that were performed for prior permit applications are still valid for the current application.

5. Comment 5: DRPI should be required to adequately address and comply with the siting criteria set forth in the applicable regulations prior to the Application being considered.

All cell construction at DRPI Landfill has been completed and no new cells are proposed as part of the Vertical Expansion Permit Application.

**Summary**

In summary, based on the information reviewed, there is not a complete migration pathway from the DRPI Landfill to Artesian's public water supply wells located south of the landfill. The erroneous speculation put forth in Artesian's letter is unsubstantiated and contradicted by actual sample data from beneath the landfill footprint as well as the very publication by the Delaware Geological Survey that was referenced by Artesian. Should you have any questions or need additional information, please do not hesitate to contact the undersigned at 410.381.4333.

Sincerely,



Carrie H. Pendleton, P.E.  
Principal Engineer



Robert Glazier  
Principal Geologist

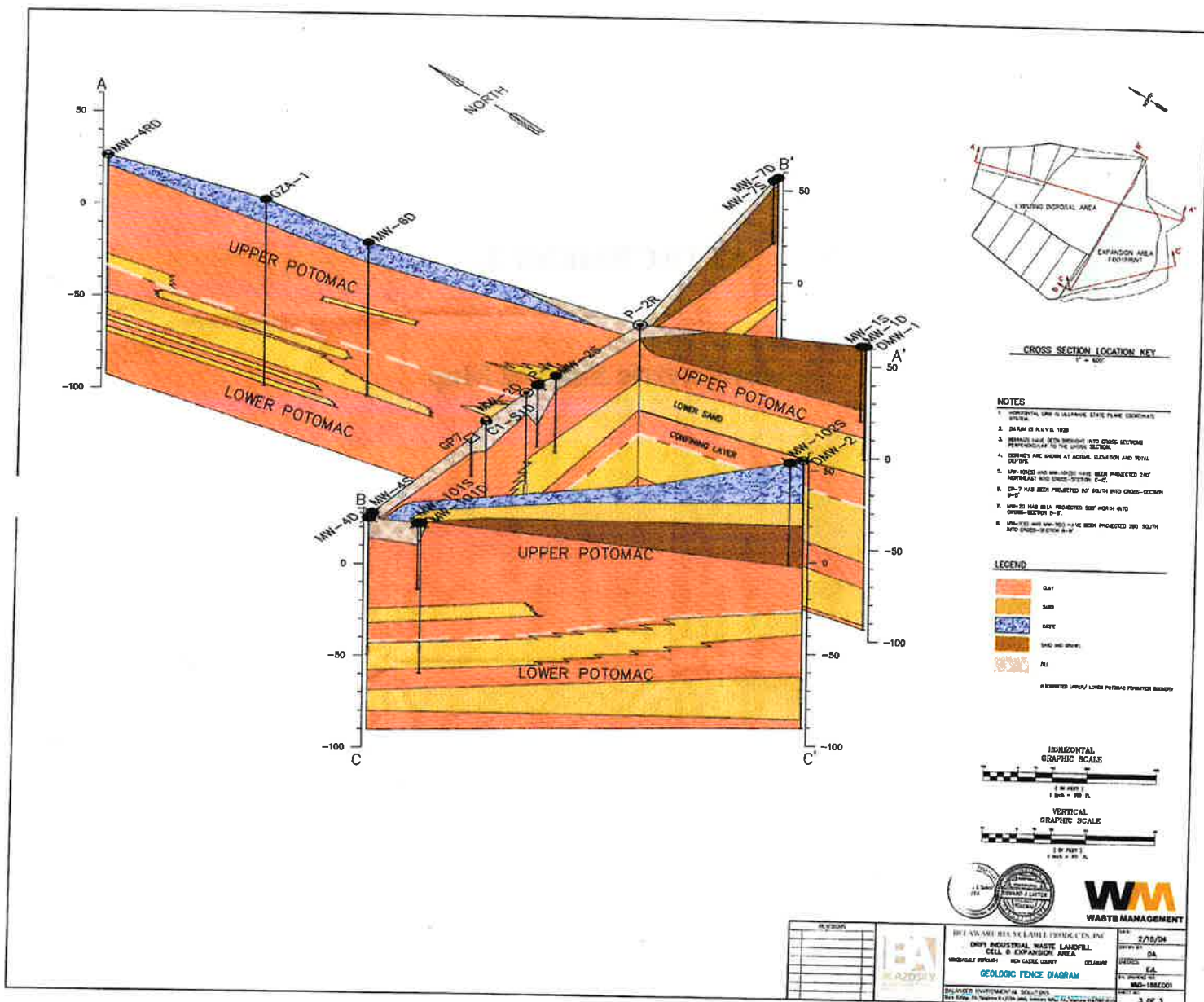


David G. Sherman, P.G.  
Licensed Professional Geologist

Attachments

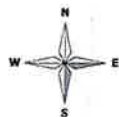
## **ATTACHMENT 1**

### **Geologic Fence Diagram**



## **ATTACHMENT 2**

### **Potentiometric Surface Map**



**Figure 1**



Drawn  
by: AMS

Checked  
by: AJS

**DELAWARE RECYCLABLE PRODUCTS, INC.**  
**DRPI INDUSTRIAL WASTE LANDFILL**

Zone Groundwater Contour Map  
October 17 & 16 2017

Minquandale Borough	New Castle County	Delaware
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38 Bishop Hollow Road, Suite 208, Newtown Square, PA 19073 Phone: (610) 325-5570  
www.taylorconcrete.com





# **Exhibit I**

Introduced by: Mr. Street, Mr. Carter  
Ms. Durham, Mr. Smiley  
Mr. Bell, Mr. Hollins,  
Mr. Cartier

Date of introduction: April 30, 2019

**ORDINANCE NO. 19-046 AS AMENDED BY FLOOR AMENDMENT NO. 1**

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED  
DEVELOPMENT CODE"), ARTICLE 3 ("USE REGULATIONS") AND  
ARTICLE 33 ("DEFINITIONS") REGARDING LANDFILLS**

**WHEREAS**, the zoning regulation established by this Ordinance has been made in accordance with the Comprehensive Development Plan for New Castle County and is designed to avoid transportation congestion, to avoid threats to health and the general welfare, to ensure adequate light and air, to avoid overcrowding of the land, and to safeguard water and sewerage, among other potential concerns; and

**WHEREAS**, the regulation also has been made with reasonable consideration of the character of the relevant zoning district and the suitability for particular uses, with a view to protecting and promoting desirable living conditions, sustaining the stability of neighborhoods, protecting property against blight and depreciation, conserving the property value of homes and buildings, and encouraging the most appropriate use of land and structures in New Castle County; and

**WHEREAS**, New Castle County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests.

**NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

Section 1. *New Castle County Code* Chapter 40 ("Unified Development Code"), Article 3 ("Use Regulations"), Section 40.03.323. is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 40.03.323. – ~~Reserved~~Solid Waste Landfills.

In addition to satisfying all other legal requirements and standards, landfills shall conform with the following standards:

- A. Landfills shall not exceed 140 feet in height, as determined pursuant to industry standards, and all requests to increase the landfill height up to and including this maximum shall be subject, first, to an assessment of:
1. The benefits of and need for any proposed height increase;
  2. The impact of such height increase and associated landfill operations on the health of nearby residents;
  3. The impact of such height increase and associated landfill operations on the values of real property in proximity thereto;
  4. The impact on traffic in the surrounding area;
  5. The impact on noise and visual blight to the surrounding area;

6. The impact on stormwater, wastewater discharge, and flooding in proximity thereto;
7. All other impacts on the health, safety, and general welfare of nearby residents;
8. The compatibility with the policies and objectives of the Comprehensive Development Plan of New Castle County;
9. The impact of the proposed height increase on immediate residents and neighborhoods and the compatibility therewith, and a comparison of the impact on and compatibility with surrounding residents and neighborhoods; and
10. Whether the benefits of a height increase outweigh the negative impacts.

Section 2. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 3 (“Use Regulations”), Section 40.03.110. (“Use Table”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 40.03.110. - Use table.

Table 40.03.110A. General Use Table										Table 40.03.110B. General Use Table								Table 40.03.110C. General Use Table	
Zoning District (Urban and Suburban-Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory										Zoning District (Suburban and Special Character)								Additional Standards (all districts)	
Land Use	TN	ST	MM	ON	OR	CR	BP	I		CN	S	SE	NC	HI	EX	SR		Parking	Limited & Special Use Standards
...																			
Industrial Uses										Industrial Uses								Industrial Uses	
Heavy industry	N	N	N	N	N	N	N	N		N	N	N	N	Y	N	N		Table 40.03.522	<u>Section 40.03.323.</u>
...																			

Section 3. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 33 (“Definitions”), Section 40.33.270. (“Industrial Uses”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 40.33.270. - Industrial uses.

...

- C. *Heavy industry.* This category includes construction, mining, manufacturing, transportation, and public utilities due to the land use intensity impacts typically associated with large industrial uses, their accessory outdoor storage uses, and large building areas. The following uses are permitted:

Animal food, meat product, seafood product manufacturing (NAICS 3111, 3116, 3117)

Tobacco manufacturing (NAICS 3122)

Breweries, wineries, distilleries other than brewery-pubs and craft alcohol production establishments (NAICS 31212, 31213, 31214)

Sawmills (NAICS 3211)

Manufactured home manufacturing (NAICS 321991)

Pulp, paper and paperboard mills (NAICS 3221)

Petroleum refining and related industries (NAICS 324)

Chemical manufacturing, including compost operations (NAICS 325)

Cement manufacturing (NAICS 32731)

Ready-mix concrete manufacturing (NAICS 32732)

Other nonmetallic mineral product manufacturing (NAICS 3279)

Primary metal manufacturing (NAICS 331)

Ammunition (except small arms) manufacturing (NAICS 332993)

Transportation equipment manufacturing (NAICS 336, except 3363, 336991)

Rail and water freight facilities (NAICS 482, 483)


Solid Waste Landfills (NAICS 562212)

Section 4. This Ordinance shall become effective immediately upon its adoption by New Castle County Council and approval of the County Executive, or as otherwise provided in 9 Del. C. Section 1156.

Adopted by County Council of  
New Castle County on: 8/27/19

  
President of County Council  
of New Castle County

Approved on: August 28, 2019

  
County Executive  
New Castle County

**SYNOPSIS:** This Ordinance establishes that *Solid Waste Landfills* (NAICS 562212) shall not exceed 140 feet in height, as determined pursuant to industry standards, and all requests to increase the landfill height up to and including this maximum shall be subject, first, to an assessment of:

- The benefits of and need for any proposed height increase; the impact of such height increase and associated landfill operations on the health of nearby residents; the impact of such height increase and associated landfill operations on the values of real property in proximity thereto; the impact on traffic in the surrounding area; the impact on noise and visual blight to the surrounding area; the impact on stormwater, wastewater discharge, and flooding in proximity thereto; all other impacts on the health, safety, and general welfare of nearby residents and neighborhoods; the compatibility with the policies and objectives of the Comprehensive Development Plan of New Castle County; the impact of the proposed height increase on immediate residents and neighborhoods and the compatibility therewith, and a comparison of the impact on and compatibility with surrounding neighborhoods; and whether the benefits of a height increase outweigh the negative impacts.

In addition, this Ordinance clarifies that a *Solid Waste Landfill* (NAICS 562212) is a permissible use in a Heavy Industry zoning district.

Furthermore, the zoning regulation established by this Ordinance has been made in accordance with the Comprehensive Development Plan for New Castle County and is designed to avoid transportation congestion, to avoid threats to health and the general welfare, to ensure adequate light and air, to avoid overcrowding of the land, and to safeguard water and sewerage, among other important concerns.

The regulation also has been made with reasonable consideration of the character of the relevant zoning district and the suitability for particular uses, with a view to protecting and promoting desirable living conditions, sustaining the stability of neighborhoods, protecting property against blight and depreciation, conserving the property value of homes and buildings, and encouraging the most appropriate use of land and structures in New Castle County

**FISCAL NOTE:** There is no discernible fiscal note.